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THE FORUM.

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CARLISLE, PA.

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LAW SCHOOL COMMENCEMENT.

The Commencement of nineteen-one was one of the most interesting and attractive which have been held at Old Dickinson for many years. Much might be said concerning all of the exercises of the week, but space will not permit, and we must confine ourselves to a brief mention of the most important events. The weather was at its best, being cool and pleasant. The exercises for the week began with the Baccalaureate sermon by Dr. Reed on Sunday morning, June 2nd. Dr. Reed delivered one of his characteristic, strong and emphatic sermons, and administered sound and impartial advice to the class.

The Commencement exercises proper of the Law School were held in Bosler Hall on Tuesday evening, June 4th, beginning at 8 P. M. The hall was well filled, and the exercises of a most interesting character. After a selection by the orchestra, W. Alfred Valentine, '01, as class representative, delivered an excellent oration. The oration is printed elsewhere in this issue. After a second selection had been rendered by the orchestra, the Baccalaureate address was delivered by that distinguished and eminent jurist, Hon. J. Hay Brown, LL. D., Justice of the Supreme Court of Pennsylvania. Mr. Brown's address was a strong, powerful and masterly one, and well received by the large audience.

After this address, degrees were conferred upon the class, which numbers thirty, and the prizes were awarded; after which Dr. Reed conferred the degree of Doctor of Laws on the distinguished speaker of the evening, Hon. J. Hay Brown. The exercises closed with a selection by the orchestra.

The following is a list of those on whom degrees were conferred:

THREE-YEAR COURSE.

Jasper Alexander,	Harry P. Katz,
Samuel E. Basehore,	Jos. B. Kennedy,
Wm. Stuart Clark,	William H. Kern,
Daniel F. Deal,	John Kemp,
Leon W. Edwards,	Daniel Kline,
Lloyd L. Frank,	Jas. N. Lightner,
Wm. B. Gery,	Arthur W. Mitchell,
Philip M. Graul,	Chas. A. Piper,
H. M. Henderson,	Warren L. Shipman,

Floyd L. Hess, Wm. T. Stauffer,
Lorrie R. Holcomb, Wm. H. Taylor,
Wm. W. Johnson. W. Alfred Valentine.

TWO-YEAR COURSE.

Barton B. Barr, Ralph D. Nichols,
Wm. E. Elmes, Wm. H. Trude,
N. Russell Turner.

The following was the order of the exercises:

Overture—"Serenade".....*Herbert*
Address—The Responsibilities of the American Lawyer, W. Alfred Valentine, '01.
Selection—"Guardsmount".....*Ehlinberg*
Baccalaureate Address—
Hon. J. Hay Brown, Justice of the Supreme Court of Pennsylvania.
Selection—"Cupid's Garden".....*Eugene*
Conferring of Degrees.
Awarding of Prizes.
Selection—"Cuban Independence".....*Henninger*

The committee in charge deserves the thanks and congratulations of all for the large amount of work which fell to their lot and for the successful outcome of their efforts. The committee was as follows: Arthur W. Mitchell, chairman, William Stuart Clark, Chas. A. Piper, Wm. T. Stauffer, Ralph D. Nicholls.

The ushers were A. M. Hoagland, Walter P. Bishop, Chas. S. Kline and Jos. P. McKeehan.

ALUMNI NOTES.

Harrison Walker, '96, spent several days in town during the latter part of May.

Thomas E. Vale, '91, has been nominated for District Attorney of Cumberland County.

Arthur M. Devall, '99, will in all probability be nominated for District Attorney of Potter county. A nomination in that county is equal to an election.

The following men visited Carlisle during the Commencement season: William A. Jordan, '99, Isaiah Sheeline, '99, S. W. Kirk, '96, C. W. A. Rochow, '96, Robert W. Irving, '98, Edward Taylor Daugherty and W. W. Mearkle.

Arthur W. Mitchell, '01, was admitted to practice in the several courts of McKean county. Mr. Mitchell is the first man to be admitted of this year's class to the home bar. We wish Mr. Mitchell success.

Harry P. Katz, '01, has been admitted to practice in the several courts of W. Va.

The following is taken from "The Scranton Republican":

Any mention of the younger attorneys of the city would be incomplete without the name of Mr. D. L. Fickes, with offices at 812-13 Mears building, who graduated from Dickinson School of Law, Carlisle, Pa., in 1895, and at once commenced the practice of law. He has built up a fine business, making a specialty of common pleas and orphans' court and he has been eminently successful in settling up a number of states.

Mr. Fickes is also interested in many valuable parcels of real estate, and during the past two years has been identified with some large transactions in realty. He also makes a specialty of loaning money on first mortgage and his clients may always feel assured that their interests are in most capable and efficient hands if placed in this gentleman's care.

Hon. W. D Boyer, '92, and E. J. McCune were elected to the Board of Incorporators of the Dickinson School of Law at their last meeting here on June 4th.

The following men were admitted to practice in the several courts of Cumberland county on Wednesday, June 5th. We wish to congratulate them upon the successful termination of their courses and trust they will meet with a full share of success:

Alexander, Basehore, Clark, Deal, Frank, Gery, Graul, Harpel, Henderson, Hess, Holcomb, Johnston, Katz, Kennedy, Kern, Kline, Lightner, Mitchell, Piper, Shipman, Stauffer, Taylor, Valentine, and Nicholls.

HILDRETH—TOWNSEND.

Cape May, June 5.—Amid a bower of June roses, yesterday, at noon, Mr. Llewellyn Hildreth, of Rio Grande, was married to Miss Mary E. Townsend, daughter of Samuel Townsend, of Cold Spring. The event occurred at the home of the bride's parents, and was witnessed by the families of contracting parties and a number of their intimate friends. Rev. A. J. Gregory,

THE FORUM BOARD.

BARTON B. BARR. WILLIAM STUART CLARK. W. ALFRED VALENTINE.

JAMES N. LIGHTNER. CHAS. A. PIPER.

pastor of the Tabernacle Methodist Episcopal church, officiated. The newly wedded couple are prominent in educational circles, having taught in the public schools in Cape May county for a number of years.

KISER—BUTLER.

Bridgeton, June 5.—This afternoon there was a pretty home wedding, Mr. Harvey Selner Kiser, a rising young lawyer of Doylestown, Pa., and Miss Mary Louisa Butler, eldest daughter of Stephen Butler, of this city, being the contracting parties.

The ceremony was performed by Rev. A. Percival Hodgson, of Roxborough, Philadelphia. Mr. and Mrs. Kiser left here on an afternoon train for Buffalo and Niagara Falls. They will reside in Doylestown.

PRIZES AWARDED.

The Wm. C. Allison prize was awarded to W. L. Shipman, of Sunbury, of the Senior class, for the best thesis on the Landlord's Remedy of Distress.

The Wm. D. Boyer prize, No. 3, was divided between L. Floyd Hess, '01, and A. M. Hoagland, '03, for the best examination in Torts.

The Wm. D. Boyer prize, No. 1, was awarded to Jos. P. McKeehan, '02, for the best examination in Evidence.

The Wm. D. Boyer prize, No. 2, was divided between Crary and Lambert, for excellence in the law of real property.

The first Dean's prize was awarded to Wm. E. Elmes, for the best briefs in cases heard in the Moot Court during the January-June term of 1901.

The second Dean's prize was divided between Schantz and Gerber, for the best examination in Real Property.

The William D. Boyer prize, No. 4, was awarded to William H. Taylor, for the best thesis on the Law of False Pretences in Pennsylvania.

THESES.

The following are the topics upon which the graduating students of this year have written:

Incompetency of Witnesses—Stauffer.

Sales of Land by Executors and Administrators—Gery.

Subjects of Mechanics' Liens—Frank.

Widows' Exemption—Alexander.

Character Evidence—Harpel.

Fraudulent Conveyances—Piper.

Widows' Exemption—Basehore.

Widows' Exemption—Lightner.

Replevin in Pennsylvania—Clark.

Recovery of Money Paid Under Mistake—Edwards.

Law of Murder—Henderson.

Defalcation—Kennedy.

Plaintiff in Execution of a *Fi. Fa.*—Shipman.

Evidence Excluded by Reason of Public Policy—Barr.

Sales of Personal Property—Turner.

Suretyship—Kemp.

Law of Turnpikes in Pennsylvania—Valentine.

Justices' Jurisdiction in Crimes—Hess.

History of Rule in Shelly's Case in United States—Nicholls.

Law of Murder in Pennsylvania—Graul.

Admissibility of Extra-Judicial Evidence—Holcomb.

Contingent Remainders—Kline.

Competency of Witnesses—Elmes.

ABOUT OUR MOOT COURTS.

As the Moot Court is a specialty in our school, a word of explanation to those who, not being of it, may see this number of the FORUM, may not be inappropriate.

Three nights a week are devoted to this work. On each night two cases are heard. Some days in advance, statements of facts are handed down to four students, who are to act as counsel, two on each side. The sides are determined by lot or agreement, or are prescribed by the professor. It then becomes the duty of the counsel to study the case, settle upon the issue, investigate the authorities, prepare briefs and at the appointed time make oral argument.

During the year just closing, a student has sat as judge; five students, therefore, are engaged in every case. After the argument, the judge prepares an opinion, and judgment or decree, from which the disappointed party may appeal to the Dean, who, in turn, writes an opinion containing his decision. Thus it happens

that in every case five students are engaged.

The FORUM is designed primarily to embody and preserve the work of the Moot Court. Nearly all the cases are reported in it; the statement of facts, abstracts of the briefs, with the names of counsel; the opinions of the students who sit as judges in the lower courts, and the opinions on appeal. During the year now closing, one hundred and fifty-six cases have been heard, each student having, on the average, been counsel in six cases, and the members of the two upper classes having served as judges three or four times.

It is thus seen that during the course of three years a student acquires a very considerable practice in the preparation of cases for court, in the compilation of briefs, in oral argument before the court, in the weighing of the decisions, often requiring much reflection to harmonize, in the formation of definitive conclusions concerning what the law is, and in literary composition. We can safely say that no other school furnishes to the student so extensive and varied a training in these particulars.

BOOK REVIEWS.

FALSTAFF AND EQUITY.—*An Interpretation by Charles E. Phelps—Haughton, Mifflin and Company, Boston and New York, 1901, pp. xvi, 201.*

The title of this volume is likely to arouse, at first glimpse, the curiosity of the lawyer. For what, pray, had the fat, gay and witty Sir John to do with such a dull and abstruse thing as Equity? Just this, that he once cracked a joke upon it; the point of which, long lost, Judge Phelps has re-discovered and revealed to the world.

It may be recalled that in what is known as the Gadshill Adventure, 1 Henry IV, Act II, Scene 2, Prince Hal and Poins, carrying out their understanding at Falstaff's expense, have contrived to absent themselves at the critical moment, thus leaving Sir John with Bardolph and the rest to rob the travelers without their aid. At the moment which intervenes between the highway robbery and the attack by the Prince and Poins upon Falstaff and his crowd, Sir John is made to say: "Come, my masters, let us share and then to horse before day. An the Prince and Poins be not two arrant cowards, *there's no equity stirring.*" Now, this declaration, which by its position seems to have been intended as the climax of a most humorous scene, falls perfectly flat to the unenlightened reader. And yet not one of the many learned Shakesperean interpreters has ever attempted to throw a beam of light upon the passage. The theory of Judge Phelps is that it was neither more nor less than a timely "gag," and one which must have appealed very strongly to the audience of the day. In support of his view, he reveals with rare skill the many interesting incidents and the bitter personalities which characterized the struggle between the law judges and their brothers in the court of equity, and which made that struggle an all-absorbing topic of daily conversation among all classes of people. Heale's case, Throckmorton v. Finch, and other famous causes are shown to have aroused the highest pitch of partisan excitement, and it is pointed out that the mere suggestion that equity was not stirring, must have been so far from the known fact as to be ludicrous in a high degree.

The book is really of much greater value than its name and purpose indicate, and we wonder if the author's work did not expand far beyond his original conception. However that may be, the history of the great judicial war is so entertainingly told that the reader is likely to forget ere he turns fifty pages that it is all for the sake of explaining a joke.

THE ELEMENTS OF INTERNATIONAL LAW, *with an account of its origin, sources and historical development—By George B. Davis—Harper and Brothers, New York and London, 1901, pp. xxvi, 612.*

This is a new, completely revised and enlarged edition of the author's earlier work, the most notable addition to the text being that of a number of the more important cases to which the international experiences of the last fifteen years have given rise. The volume remains, however,

what it was originally intended to be, not a manual or an exhaustive treatise, but essentially a text-book for the use of students. As such, the analysis and arrangement are admirable, and the references, both at the foot of the pages and the close of the chapters, notably complete. The work has been used, we believe, in a large number of universities, colleges and law schools, and its author, who is the professor of law at West Point and deputy Judge-Advocate General in the United States army, is a widely recognized and approved authority. The book is certainly a timely one, for rarely, if ever, have our people been confronted by international problems of such gravity and interest as at the present day. It is a pleasure to note that the value of the work is greatly enhanced by an exceptionally complete index and list of authorities.

The following books are acknowledged. Reviews will follow:

AMERICAN LAW.—By James DeWitt Andrews—Callaghan and Company, Chicago, 1900.

LAW OF REAL PPOPERTY.—Three volumes.—By Charles T. Boone—Bancroft-Whitney Co., San Francisco, 1901.

DEBATES IN THE SEVERAL STATE CONVENTIONS on the adoption of the Federal Constitution.—Five volumes. Second edition.—By Jonathan Elliot—J. B. Lippincott Company, Philadelphia, 1901.

RESPONSIBILITIES OF AMERICAN LAWYERS.

(Address by W. Alfred Valentine.)

Born at the dawn of civilization, cradled in the dim far-off mists of antiquity, the child of wisdom and justice sprang into being and from the earliest era of which man has record, law has flourished and waxed strong; with a slow but steady growth it has brought order out of chaos, until now it reigns supreme throughout the earth, all people and all tongues are under its sway, and all men pay it reverence.

"Men die, laws never" said the astute crafty Richelieu,and in his words the law and its progress and influence is epitomized. Jurisprudence has seen kings rise and fall, empires hold sway over countless hosts and boundless acres, only to fall at last into ashes and decay, leaving behind them only memories and their laws, the latter an imperishable legacy. Great conquerors, proud kings and stern warriors have "by the red light of blazing roofs, built the rainbow bridge to glory and called it fame," but athwart their victorious progress has flamed the red bar-sinister of ruined homes and outraged hearths; amid the swell of their victorious trumpets has quavered the piteous cry of the widowed and fatherless, and the entire happiness of countless lives has been desolated and crushed under the wheels of their chariots and the hoofs of their horses. Far otherwise has been the influence of law and the fame of lawyers, their power has ever been weilded for peace and progress; not by the stern rule of the sword, but by the mild sway of justice are their victories won, and their fame is built, not on homes wrecked but on homes preserved, not lit by the ruddy glare of blazing homesteads, but by the flickering light of the furnace of industry, made possible under the just administration of fixed laws. To the influence of this mighty force and its devotees, the gentlemen of the legal profession, on the world's peace and progress I invite your attention for a few brief moments this evening.

The law is to-day recognized as the foundation of justice and liberty. Without law there can be no recognition of human freedom, and just laws grow out of and are themselves the best possible evidence of a state of true liberty. The words of Pitt, "where the law ends tyranny begins," correctly and clearly point out the great importance of law to a real enjoyment of freedom and liberty. The dignity and splendor of our system of jurisprudence is, that under its administration the wrongs of all are speedily redressed, and the rights of each and every citizen are guaranteed. In the Halls of Justice the humblest man is the peer of the proudest, and men may ask for justice, not with the cringing tone and fawning mien of those who beg a king's favor, but with the erect carriage and clear voice of men asking a man's rights. The very government under which

we live, and which effectuates the laws by which we are ruled, is itself the creation of law, whose all pervading influence has been summarized by the immortal Blackstone when he says, "Law is a science which is universal in its extent, applicable to each individual, yet comprehending all things."

Look back on the history of the development of jurisprudence and note how familiar the great lawyers' names will be to the student. The long roll of honor in both England and America is one of which to be proud. The Hales, Holts, Mansfields and Erskines, of England, the Marshalls, Kents, Greenleafs and Choates, of our own fair land, have alike reflected glory on the calling they so highly adorned, and the lawyer of to-day has shown himself to be a worthy successor to those great dead; intelligent, upright and manly in conduct, cherishing a high and delicate sense of individual honor and professional pride, and displaying at all times a deep regard for the dignity of his high calling and a decorous reverence for the example and counsel of those illustrious sages who have earned undying renown.

To be a great lawyer one must be a great and good man, the moral standard cannot be too high, for his duty calls him into all the shifting scenes of life where honor is most needed and where dishonor can be most readily concealed.

The man of business, swamped and overloaded with debt, entangled in a network of misfortune, must seek a lawyer's aid, and frequently must trust himself, his good name, his all, in his counsel's keeping. His secrets, his fears, his very inmost thoughts are all poured out before his lawyer, and the law itself forbids the betrayal of the confidence thus obtained. In the hour of sorrow and distress the lawyer is sought by the widowed and orphaned, his knowledge and his skill is interposed as a buckler of defence between the fearful, the timid and oppressed and the rapacious talons of the oppressor, and when the trembling culprit stands shivering before the awful front of that justice he has outraged, it is the lawyer who steadies the hands that hold the scales and demands for even the guilty the application of just punishment and not blind, unreasoning revenge. Not alone in the active scenes of life is the lawyer a participant, but when the sands run low, and the shadow of the dark valley draws near, he is called to commit to legal form the last mortal wishes of the departing one, to preserve his earthly possessions to the object of his affection, or if perchance the lamp of life expires before any legal expression of the will be made, he leaves to law and the lawyer the welfare of his dear ones and the distribution of his possessions. Well might Sir Richard Bethel say, "There is no other class or order in the community upon whom so much of human happiness depends, or whose pursuits and studies are so intimately connected with the progress and well being of mankind."

Cases involving the freedom or life of the accused demand in the lawyer a far-seeing discrimination and an almost omniscient knowledge. He may be required to face the indignation of an unthinking populace, who frenzied by some awful crime demand a victim to glut the popular vengeance. *Then* must he maintain his integrity at the sacrifice of popularity or ambition, and, for the love of justice alone brave with heroic courage the exultations of enemies and the blame of friends. It is his high and inestimable privilege by judicious and seasonable counsel to rescue his clients from the fangs of merciless cupidity or unmerited reproach, to defend their characters from unjust aspersions, no matter how powerful or numerous the assailants may be. It is then the lawyer's privilege to stand ever firmly for the right and just cause, to foil the efforts of the oppressors and to become the defenders and upholders of our civil institutions, state and national. Hear the testimony of Dr. Draper in his "Intellectual Development of Europe," speaking of the professions of law and medicine, "It is to the credit of both these professions that they never sought a perpetuity of power by schemes of vast organization; never attempted to delude mankind by stupendous imposture; never compelled them to desist from the expression of their thoughts, and even from thinking by alliance with civil power. Far from being the determined antagonists of human knowledge, they uniformly fostered it and in its trials defended it."

The new century that is just opening before us blushes with a rosy morning promise of a stupendous future. Its predecessor was the greatest century in the history of the world; in it were recorded more and greater achievements for the human race than in all the eighteen centuries of the Christian era which preceded it, and now, in the dawn of this wondrous twentieth century we go forth to assume responsibilities, not only to future clients, but to society, to the world as a whole; we don the toga of manhood and slip out into the world, to take our place, humble though it may be, in the ranks of our great profession, there to toil with what ability we may for the honor of our calling and the good of the world at large.

American lawyers from the days of John Marshall to the present time have always been prominent in the nation's struggles. It was a Virginia lawyer who roused the country's patriotism by his eloquent cries for liberty. It was a New England lawyer who in sonorous periods defied the forces of disunion. It was an Illinois lawyer who uttered the first words of reconciliation after the great fratricidal struggle was over, and it is an Ohio lawyer who now sits in the White House at Washington, an equal, nay superior, of kings and emperors.

Call the roll of America's famous men and see the vast percentage of lawyers included in that mighty host. Nor can one doubt that in the years to come the lawyer will continue to be the leader in all that pertains to his country's good or welfare. Never was the need of able lawyers so great; never were the questions to be argued and settled so vital, so all important; never was the field of a lawyer's labor wider, and never was the opportunity of winning a nation's honor, a nation's thanks, greater than in the present century. The weighty questions, as to the status and relations to us of the inhabitants of the vast lands now fallen under our sway, the real nature of the tenure by which we hold the Isles of the far east, and our rights and liabilities in them and for them, depend largely on the learning, wisdom and courage of American statesmen and lawyers.

With the disappearance of Spain from the world's stage comes the advent of a new figure in the world's council, star-eyed she takes her place on the world's wide stage and cries aloud the very key note of her existence, "we stand for liberty not license, and our motto is ever one for all, all for one." Surely when the poet's dream is realized

"When the war drum throbs no longer
And the battle flag is furled
In the Parliament of man, the federation of the world,"

the brightest figure in all the concourse will be that of Columbia, and as her star-crowned brow is turned to the heavens, there shall rise about her the song of a freed people, freed by the power of her arms and wisdom of her laws, for in America's expansion has come untold blessings to the people who have fallen under the shelter of her laws and influence; and the mightiest agent in procuring this great result will not be the American soldier, gallant as he is, but the American lawyer.

And not only in the wide field of national expansion must the lawyer play his part, but the vital questions of the nation's inner life demand attention and settlement. The race question, big with all its due possibilities, dangerous with the latent power of some great explosive, demands attention and careful, subtle handling. The great increase in the number of trusts, those vast aggregations of capital, the monopolistic tendency of the age, and the correlative question, the danger in the formation of trade unions and strikes, all demand serious, immediate attention. In these fields as well as in mere matters of law, the lawyer must be prominent, and it will be to his influence more than to that of any other class or body of men, that the satisfactory adjustment and settlement of these great questions will be due.

Law and politics are necessarily in some degree at least united and few lawyers indeed can avoid more or less intrusion into the political arena. It is to the honest lawyer perhaps more than any other person, that the people look for deliverance from that parasite on the tree of national government, the boss. Un-American, unrepublican, the boss has gradually gained control to an alarming extent of our governmental machinery, both state and na-

tional. This unnatural growth on our political life is utterly obnoxious to republican institutions, and unless destroyed bids fair ere long to make a mockery of our form of government, and to subvert the very springs of our national being. Nowhere are honest capable lawyers needed more than in the forefront of the attack on this crying evil of our time.

If the lawyer, then, is to maintain his high place in the history of our country, and if he is in the future to be as in the past, the most prominent figure in the development of the country's heritage, it is vitally essential that he should be a man of culture and learning, one well trained in the theory and practice of his profession, and it was in recognition of this fact that the gradual evolution, now almost completed, in the method of legal instruction took place. The demand for comprehensive and systematic training led to the establishment of schools of law throughout the land, and numbers of the most prominent figures at American bar have not hesitated to give their time, labor and splendid talents to the task of instructing and training the future lawyer of America.

Among the first of these institutions was founded our own fair Alma Mater. From the germ of its humble beginning has grown the school we know and love so well, and which we believe to be the best and foremost institution of its kind in the Keystone State, and from our Alma Mater's sheltering arms have gone forth famous men, noted jurists, and a great host of honest clever lawyers, the backbone of the legal profession in this state.

All honor and praise should be given to those who have made this possible, and therefore to *you*, gentlemen of the faculty, to you, who have by unwearying effort and toilsome self-sacrifice, aided, helped and guided us in our struggle toward a knowledge of the elements of our profession, we owe the profoundest gratitude, and the sincerest thanks, and the recollection of the many kindnesses we have received at your hands will be one of the dearest of the associations that hover around the memory of our Alma Mater.

Perhaps to no class of men does a community owe so much as to the faculty of an institution of this nature; the welfare of the nation depends to a large degree on the character and ability of its Bench and Bar, and it is to the influence exerted upon the student by the professor that the future lawyer's professional standing is largely due.

No law school in America has a more painstaking, conscientious and able faculty than we have, while at its head is one, who as a lawyer, author and teacher has won deserved pre-eminence, one whose learning and untiring industry are known to the entire Bar of the Commonwealth and who is remembered with respect and affection by hosts of alumni who attribute to his laborious efforts the success which they have met in their chosen profession.

Now after a period of comradeship during our course of friendly rivalry in the class-room, of mutual pleasures and successes, after the formation of numerous ties of friendship, we stand to-night at the parting of the ways. It is the last muster, for hereafter we as a class shall have ceased to exist. We cannot but feel regret at the severing of the bonds which have held us together during our course here, even while we look forward with the flush of hope on our brow into that future which holds for each one of us possibilities of success or fame, at least we may all vow that while we may not shed the lustre of a great name on the rolls of the dear old school, yet none of the class of nineteen hundred and one will ever discredit it, or cause the sons of Dickinson to blush at our name. Let us then go forth into the world unafraid, armed with an invincible resolve to follow in the footsteps of the great who have glorified our profession by their lives, and ever bearing in mind the sage advice and stirring words of New York's favored son, Roosevelt: "It is only through strife, through labor and painful effort, by grim energy and resolute courage, that we move on to better things."

SUPREME COURT JUSTICE J. HAY BROWN.

THE BACCALAUREATE ADDRESS.

(Delivered by Justice J. Hay Brown, LL. D., of the Supreme Court of Pennsylvania.)

By divine appointment we are destined to struggle. From our first to our latest breath, the struggle of existence is the struggle to succeed. With the first breath of independent physical life, the babe unconsciously begins the struggle to succeed in living, and, with the gradual development of mind and body, struggle never ceases. On the playground, among his fellows, the boy strives for leadership; in the school-room, his ambition is for first place in his class; as his years mature, at college and university, to succeed in general excellence and attainments, or in those of some special course, is every student's worthy aim that will not down; and, after awhile, with school days and college terms behind him, having attained to the stature of full manhood, and become equipped for the life-work of his choice, he commences with buoyant hope and inspiring confidence that success awaits him. This is true, whatever be man's sphere in life. The young farmer so begins to till his fields; the mechanic to ply his trade; the merchant to sell his wares; the banker to lend his money; the physician to bear healing to the sick; the minister to preach Christ and save souls, and the lawyer to participate in the administration of justice among his fellow-men. Sooner or later, the hopes of early manhood are followed by realization or disappointment, and, by the same decree that, in the sweat of man's face he shall eat his bread, it seems that the full measure of earthly success is to come to the few and disappointment to the many. But, though the heart, undaunted at the beginning of a struggle for the attainment of success, at last yields to crushing disappointments, an aim to succeed still lingers; for, when hope of success here has forever fled, and the shadows of the evening begin to come, then, if not before, the disappointed soul takes new hope in the thought that, by a properly directed life, he may, in the end, succeed in the attainment of happiness in the world beyond.

To succeed being the normal aim of life, the conditions under which success may be achieved, whether individual activity be in a moral, intellectual or material sphere, ought to be understood. Ignorance and disregard of them lead only to failure; knowledge of and compliance with them, to sure success. Truer words were never spoken than that every man is the architect of his own fortune; and he who fails need blame none but himself. In the end, he so knows the truth from his own conscience. It seems to me that I may not inappropriately on this occasion speak of some of the conditions of success in the great profession so dear to many of us, learned by observation in the career of activity in it for almost a generation, and I have, therefore, chosen as my theme, if I may so term it, "Some of the Conditions of a Lawyer's Success."

Who is the successful lawyer? What is the proper measure of his success? What is its correct standard? It is not merely the gathering of clients about him and the winning of their causes; it is not the accumulation of wealth, nor the exercise of power; nor is it eminence in public station. These are not to be disregarded or lightly considered; for, in the fullness of time, they may come to be the legitimate evidence of a well-rounded career, strenuously, faithfully and consistently pursued, and crowned with triumph. The successful lawyer, to whom come public confidence and esteem, honor and respect among his fellows, renown as the friend of right and the foe of wrong, competence to his household and peace to his conscience, is he who is loyal to his high profession; who knows that it stands for the administration of justice upon the earth; who feels that, above all other considerations, must be his sincerity and zeal in the work he has undertaken; who pleads for no man's cause that is not just and defies the world for him whose is; and who, with clear and intelligent comprehension of the great principles of truth and right, helps to make more enduring the foundations upon which society and good government rest. It was of such a lawyer that Mr. Webster spoke when he said: "Justice is the great interest of man on earth. It is the ligament which holds civilized natures and civilized beings together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness,

and the improvement and progress of our race; and whoever labors on its edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its dome still higher in the skies, connects himself, his name, and his fame, and his character, with that which is, and is bound to be, the frame of human society."

First in order, and surely in importance, among the conditions of success, is aptitude for the profession. By this I mean the genius that marks him who possesses it as naturally directed towards the study of those problems that underlie the science of the law and to the exercise of those qualities which its practice demands. He starts in the race with long advantage who, at the outset of his career, has a mind alert to comprehend and active to pursue, with fullness to contain and the tenacity to hold, the fundamental principles of order, government and law. The natural power to inquire and investigate, to balance and to judge, joined with decision and executive quality, is preeminently the inheritance of the "born lawyer," if lawyers can ever fairly be said to be "born." Though the Goddess of Wisdom was reputed to have sprung full-armed from the brain of Jove, the magic phenomena of mythology are not often repeated, and, while it can hardly be said of the lawyer as of him whose tuneful notes come unbidden, "*Nascitur non fit*," still it is so true that we all know it, that the young man, who, without natural fitness for the study and practice of the law, no matter what his general attainments may be, undertakes to enter the profession, is deluded in his expectation of winning success; and the ambition that directs him to struggle for the laurels of the forum directs him into a hopeless contest. If this were better known, the responsibility for the failure of sons would rest upon fewer fathers.

Aptitude is not always instantly discernible, and there need be no discouragement at the start over the apparent lack of it, if the young man feels that his place is at the Bar; for, if it exists, it will be disclosed. Let him not falter until, after honest effort, he has learned to know himself and that his is some other sphere in life. Let him remember that perseverance in study, culture and practice have disclosed the superior legal genius of many and the supreme aptitude of some who have achieved greatness at the bar and eminence on the bench; and let him not forget that what often seems aptitude in the beginning is soon found to be fitness for something else than the law, and, not infrequently, for failure in any walk of life. No man can succeed who is not true to himself and frank with his conscience; and, if the student of the law, in his preparatory years, or the active practitioner, before it is too late, after honest and patient, and not feverish and fitful efforts to learn the truth finds he has no natural fitness for the profession, let him leave it and struggle elsewhere for success; but, in so leaving it, let him not depart with discouragement following disappointment, but rather let him remember that his ambition is and ought to be still to succeed. Let him remember that he has aptitude for useful work in some sphere of life; and, if determined to succeed, he will find his natural fitness in some other calling, denied him for the profession of his first choice and which he imagined was his first and only love. Let him recall the names lustrous on the roll of lawyers who had failed as physicians; of the shining lights in the sacred ministry, with many saved souls to their credit, who, in the Courts, as lawyers, had never won a client's cause; and of the many who have attained unmeasured success as men of affairs in some particular sphere of human activity after having been denied it in another, because not naturally fitted for it. Gamaliel, in the Sanhedrim at Jerusalem, was a learned lawyer. So were others, but their names have perished from the earth and the records of that high court have faded away. His alone has come down to us through twenty centuries, to be borne upon the lips of men through all of those yet to come, because Saul of Tarsus sat at his feet to learn the law; but preceptor and pupil would be among the unremembered of their time if a great light had not led Paul to become the preacher and apostle, the resplendent glory of whose name shines as the sun, forever.

The great advantage of aptitude, without which success cannot come, is, how-

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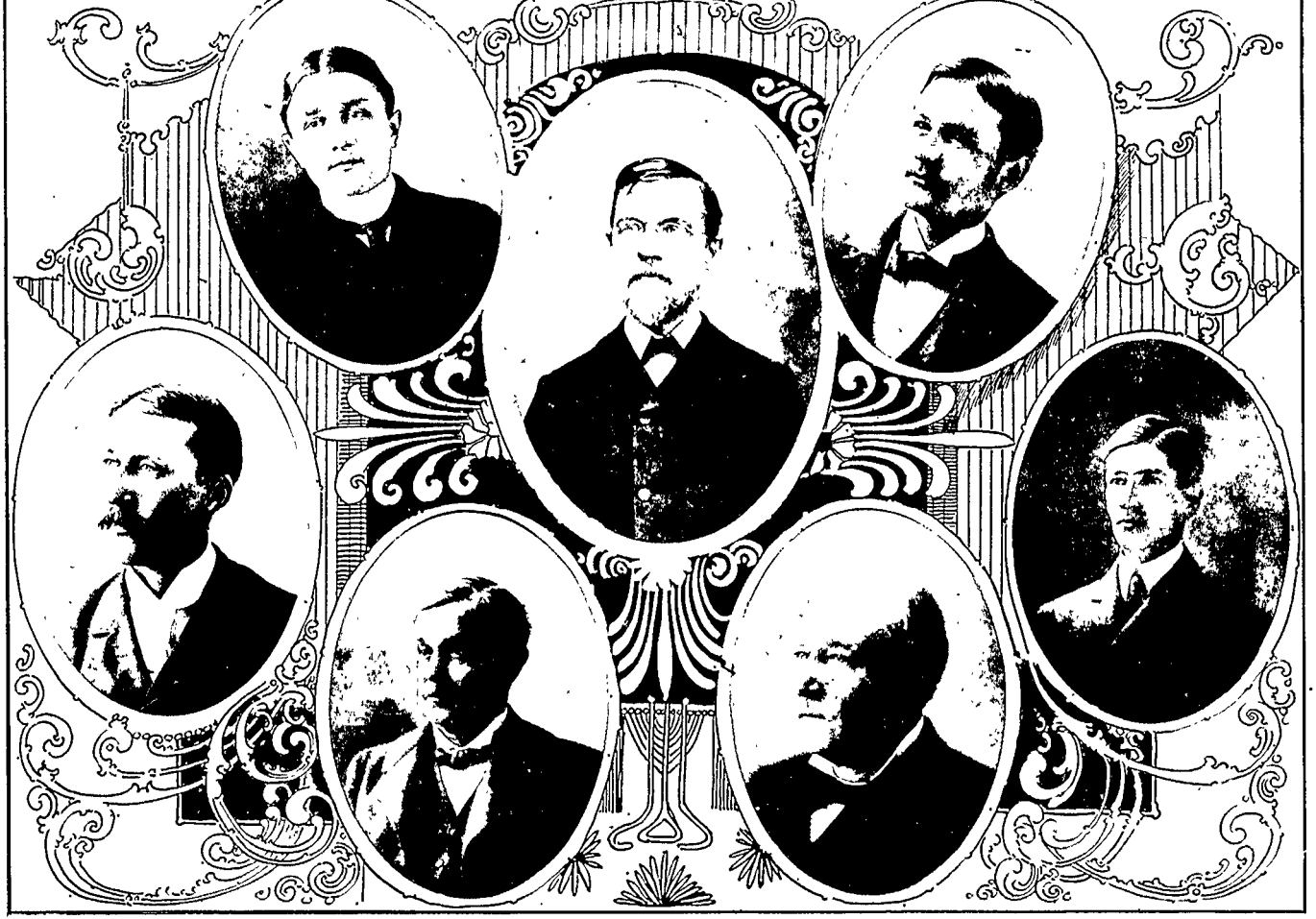
ever, but the advantage of being able to become equipped for the profession, and the next condition in order is proper preparation and equipment for its studies. The law is justly regarded as one of the learned professions—so the masses look upon it—and, if it is ever to be lowered it should be at other hands than ours. We ought to feel that the best equipment for it is that broad and generous culture of the humanities, which has stood the test of long experience, despite the practical, utilitarian and scientific trend of modern thought and education. It has not yet been demonstrated that any scheme of educational training lays so good a foundation for substantial success as the well approved, systematic study of the classics, mathematics, natural science, history and philosophy—for the educated lawyer must be the educated man—and I cannot subscribe to the emphasis placed by some on the paramount importance of the study of social sciences in preparing to study the law. The broader culture to which I have referred means the best equipment for the study and the practice of the law, and as an incident to such culture will come the consideration of other questions and problems connected with our social life, to be all the more intelligently taken up by the mind cultured and broadened in the school that the experience of years has declared to be the best. An hour's communion with Socrates and Plato in the groves of Athens is worth more to him who would study the law than weary nights with Spencer's "Social Statics." He who goes to the Delphic oracles, listens to the whispering branches of Dodona's sacred oak, dreams under the music of Apollo's lyre, or listens with terror to the clangor of his silver bow in avenging the wrongs of his priest, or follows Æneas from sacked Troy over the seas tempest-tossed by Juno's cruel wrath, until Italy and the Lavinian coasts are reached, whence sprang "the Alban Sires and the walls of lofty Rome," comes to the study of the law better fitted than he who quotes John Stuart Mill; and, in the "Progress and Poverty" of Henry George there cannot be found what is learned from Newton, Hume and Gibbon, Agassiz and Henry, Shakespeare, Milton and the Bible. Comparison of broad, liberal, classical culture with any other need go no further, for there is no substitution for it as the proper preliminary training for either of the learned professions. I am not to be understood as intending to say that without such early training, success will not come to the lawyer; for, among those who have achieved the highest distinction as counsellors and advocates, have been, and are, those to whom privileges and opportunities were denied in early life. Though, so denied by birth or fortune, their compensation has been supreme genius—genius to work, genius to study and learn, where others would be blind in ignorance, genius to succeed—and they are the just pride of the profession. If I speak to any such tonight, who, by his own unaided efforts, has won success, has supplemented in later life the neglected education of his youth, and now tells his children, in their homes of comfort, that his inspiration to succeed came from the vantage ground of his early poverty, he will, I know, give his son, as the proper training for the study of law, the early liberal education which he missed and has seen turned to the advantage of so many.

Whatever plan of professional study is to be next pursued, whether in law school or office, I have long been assured that none can be effective which ignores or dwarfs the importance of those elementary works of the masters, whose commentaries on the civil and the common law are their oracles. From them and from them alone can be learned the science of the law. In the lecture rooms of college and university, faithful teachers of the law are imparting wisdom to those striving to learn it, and words of too high praise cannot be spoken of what is there accomplished; but the words of the lecturer will fall with no profit on the ears of his hearers unless they qualify themselves to hear what he says, by tireless and unremitting study in the seclusion of closet or office of what the masters have written. By such study and by it alone can the reasons of the law be learned, the value of its maxims known and the force of its great principles impressed. With no disparagement of the law school, but with avowed high appreciation of what it does, it is but the truth

to say that, even without its great advantages, the worthy youth can still, as before it was known, become the trained lawyer, but only through severe and individual study, secluded and alone, taught by great teachers, who though dead, speak through their living pages. With all the aid and advantages that certainly come to him who can enjoy them in the law school, it must never be forgotten that *ad astra* will always be *per aspera*. No greater service can be rendered to the student of the law in the period of his equipment for its practice than to impress upon him the value of a knowledge of its reasons, of its maxims, of its great general principles, to be learned only from the sources indicated, and of the utter superficiality of mere familiarity with cases and precedents; for the law is not an exact science. If it was, many courts could be dispensed with, and the unlearned in the law could administer it through precedents and decided cases. No law school made Marshall; but, by his self-acquired knowledge of its reasons and mastery of its fundamental principles, in his high office, he could unerringly tell his colleagues what the righteous judgment of their high court should be, and turn with confidence to the learned Story to produce the cases to support it. Many other examples than that of the great Chief Justice might be given to illustrate the paramount and absolutely controlling importance of the individual effort and study of the law by the student and his thorough familiarity with the great text writers and commentators. But in passing, I shall recall, only to emphasize what I have said, the words of the gifted Black, whose genius as lawyer, judge and statesman shed lustre at the bar, on the bench and in the councils of the nation. It was my privilege to know him from my boyhood until he died, less than a score of years ago, and from friendly interest in me, his words once were, worth repeating now: "My boy, if you have read Blackstone through and through, know Chitty well, and have learned Broom's legal maxims, you are about ready to be a lawyer." This may have been extravagant, but there was much truth in the utterance.

Profoundly, though, as the career of the successful lawyer will be impressed and influenced by instructions from judicious books and schools in his preparation for practice, practical knowledge must not be overlooked. Knowledge is learned from books for its practical application; but it is useless to him who has it unless he has knowledge of men and experience with them and the matters of every-day life. The habit of practical observation should be cultivated and ordinary principles of every-day business carefully noted; for the motives which influence men in the current affairs have great significance to him who must deal with witnesses, jurors, and even judges. Again and again, in the contests at the bar and in the deliberations of the Court, a practical knowledge of the different branches of business, of commercial industries, and even of political activity, comes to the relief of him who grapples with vexatious professional problems. The reports of adjudicated cases furnish forceful and brilliant illustrations of lessons learned by the expositors of the law in the business office, at the desk of the teacher, behind the trade-counter, in the workshop, or on the farm.

At last, certified by diploma or Board of Examiners, the student takes the oath of his high office, that he will support the Constitution of the United States and the Constitution of the Commonwealth, that he will behave himself in the office of attorney within the Court, according to the best of his learning and ability, and with all good fidelity, as well to the Court as to the client; that he will use no falsehood nor delay any person's cause for lucre or malice, and is then announced to the world as a lawyer. He counts but lightly, however, on the chances of a professional career who rests confident of success upon mere adequacy of equipment, natural or acquired; for, emphasize the importance of aptitude and training as well we may, success is yet to be gained, and the value of the most complete preparation is to be exploited, in the wide field of practice. The first exaction made upon the lawyer who seeks the highest end of professional exertion is singleness of devotion to the law. She is indeed a jealous mistress, tolerant of love for no other, and he who strives for what she has to give must give himself wholly up to her. Frowns come to the suitor for her smiles and favors who,



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F. H. HOFFER, ESQ. — S. B. SADLER, A. M., LL. B.

HON. J. M. WEAKLEY. — HON. W. F. SADLER, A. M.

under her watchful eye, is caught coquetting with another; but she gives every lover a chance upon the one condition, that he worthily love her alone, and, with no sentiment, reminds him:

"The man who seeks one thing in life, and but one,
May hope to achieve it before life be done;
But he who seeks all things, wherever he goes,
Only reaps from the hopes which around him he sows,
A harvest of barren regrets."

There must be patience, too, in wooing and waiting for the favors of the law. There must be no fretting that clients do not come at once and complaint that friends do not help to bring them to the office. If the office is fit to receive them and its occupant to care for them, they will find their own way to it in time, never to leave it; but he who frets and complains that business has not come to him, instead of, with patience and perseverance, qualifying himself the better for it when it does come, will never get it, because he will not deserve it. I am not sure that it is well for clients to come rapidly; but it rather seems to me that, if they come slowly, their lawyer can better qualify himself to serve them and others and to win confidence, which spreads with certain results.

To two particular allurements the active practitioner is most liable; and their strain is so seductive that, like the mariner of Grecian story, he must seal his ears to its ravishing music. One of these is the attraction for political office. The function of the lawyer naturally makes him the spokesman of his party, and he is easily drawn into the whirlpool of that intensely interesting and absorbing passion, which, supplemented with popular applause, the clamor of the multitude, the triumph of the hour, and all the attractiveness of public fame, sweeps away cool judgment, and with it his general interest in himself and his client. There have been undoubtedly great statesmen who were great lawyers, and, besides the exalted office of the judge, that of popular representative -- to be the tribune or executive of the people—is the fit aspiration of a lawyer's career; but it must come as the end and reward of professional success, and not as a means to it. When will young lawyers learn this truth? When will they know that a struggle for preferment in political life before it has been reached in the profession means failure in both? When I recall the many lives so full of early promise among us that have gone out in bitter disappointment in the strifes of politics, I would that some one could come trumpet-tongued to every youthful lawyer as he starts on his career to tell their story for its warning.

To the lawyer who deals largely with business and commercial interests, there is, secondly, a constant fascination in the greater monetary rewards of other vocations than his own and a temptation to divide his time and talents between his professional labors and outside interests. In chance instances, the experiment is not altogether disastrous, and, in rare cases, it may prove profitable; but, with authenticated exceptions, the rule remains that the successful legal adviser of varied business interests should keep himself aloof from them. Individual financial failure or failure of business enterprises with which the lawyer may be induced to become connected discredits him in his high profession. He should, however, be thrifty and steadily strive for the accumulation of competence, always remembering, however, that his aim in life is not the getting of money. If he deserves to succeed and wins success, part of it is pecuniary reward and a deserved reputation for soundness of business judgment is no mean element in it. Such reward brings with it professional and judicial independence, and to his safe and sure investments the lawyer can turn for the substantial comfort and happiness of himself and family and for assured freedom from fretful care for the morrow. Harassed and annoyed financially, man's usefulness in any sphere is immeasurably impaired, and, at times, totally destroyed. The lawyer should ever guard against such embarrassments and remember that upon his thrift he must largely depend for an undisturbed mind, for coolness of judgment and for his ability to give unbroken attention to his clients' interests. Next to man's duty to so live as to be at peace with himself is that of acquiring, not only an unblemished name, but an estate as well; for the world presents no sadder spectacle than poverty in old age after neglected opportunities in the noontide of life. This

should never be forgotten, and by observing prudence and avoiding profligacy, the lawyer who succeeds in his profession will succeed to an estate, adequate, at least, to his needs. On the other hand, let him remember that, if his pride is in his profession and his aim is for a name in it that may linger and, perhaps, not die, he must strive for success in it alone; for, when tempted by the prospect of greater gain elsewhere, his devotion to his profession wanes, and his hands reach out for silver and gold, no matter how high his rank at the bar or exalted his eminence on the bench, he begins to be forgotten as a lawyer and quickly passes to the unremembered of his day.

The singleness of devotion which binds the lawyer to his profession must likewise be a supreme devotion to the law itself, as distinguished at times from the immediate cause of his client. He is a minister in a sacred temple and his oath binds him and his conscience to its service at all times. Loyalty to his client's cause demands, to the utmost that the law permits, his protection of interest in life, liberty and property but no more; and he must find such protection for his client in the law, which is but another name for justice, good morals and social order; and, if it cannot be found there it does not exist. Devotion to the law itself means devotion to its fair and honest interpretation at all times, with face immovably set against any cunning reading of it, or any improper, ingenious reasoning from it, to defeat an adversary or to win a client's cause. It means that for no man's cause and for no consideration will the upright lawyer lend his talents to the prostitution of the law, and the inspiration of his career of success is: "*Pro clientibus saepe; pro lege semper.*" Devoted to the law itself, he who contributes to keep right or set right its landmarks, and, as new problems are presented, aids to solve them, according to the principles of righteousness and good government, who discerning the deficiencies of the statute, supplies them, or, detecting its errors, corrects them, makes a contribution to his profession; and, as such labors are of general or limited concern, achieves a greater or less degree of success. No one can hope to reap the reward of a successful career who refuses to submit himself to the condition that his duty to his client must be subordinated to his duty of cooperating in the effort to administer justice. I am well aware that deflections from this standard are difficult to avoid, and when embarrassment comes to the lawyer in determining whether service to his client will be infidelity to the law, he must rely upon his intelligence and conscience to rightly direct him. In this connection, speaking of the lawyer's duty to subordinate his interest in his client to his interest in the law, I may not inappropriately refer to his duty of subordinating the client to himself. He must ever control his client and insist upon compliance with what he directs to be done. Frequently, the client, through ignorance or prejudice, is actually blind to his own real interests, and the lawyer, when so convinced, who has not the courage to command him into obedience to his directions, who dallies with him and makes excuse for him by saying he cannot control him, is a coward. He fears, who should be feared and respected. Without dwelling longer on this, let me only say that he serves his client best who never hesitates to frankly, fearlessly and manfully advise what ought to be done, and to insist that his advice be followed. This is the duty of the adviser to the advised. To be advised, the client seeks his counsel, and expects to be guided by his judgment. It were well if this were better understood.

Absolute fidelity to the court is not only the first and controlling duty of an attorney, but one of the absolute essentials to his success. The obligation of his oath commits him sacredly to it, and whatever may be achieved by violation of that obligation is sure failure, if not revealed disgrace. By the prostitution of the profession and its privileges, clients may be satisfied and others gained; fees may be earned: verdicts may be wrested from juries and judgments won from courts, but no true standard of success will tolerate results that do not more firmly establish the administration of the law on the foundations of right and justice. Fidelity to the court means frankness with it at all times; absolute candor in every statement made to it; proffers to it the results of pro-

fessional learning and research to aid it in its deliberations; constant concern for the maintenance of its dignity and honor, and unwavering co-operation with it in the effort to administer the law for the attainment of justice. What such fidelity means to the court none but the judge can know. By inspiring mutual confidence, it makes both bench and bar the better; it increases the usefulness and effectiveness of the former, and raises the standard of the latter; and the lawyer faithless in this duty never knows success.

I am next brought to a consideration of moral character as a condition of success; and, by moral character, I mean Christian moral character. The standard of that morality is found in the precepts of the great law-giver of God's chosen people and in the teachings of the Founder of our later Christian system of truth. With all due regard for religious tolerance, it is a matter of judicial notice that we are a Christian people, and that Christianity is part of the law of our land. The American lawyer enters upon his career among a Christian people; he springs from the loins of Christian parents, and he is reared in the Christian faith. He may not be denied success in professional life because not actually identified with some church; but he dare not defy the Christian religion, or utterly ignore it in his daily walk and conversation. Around and about him on all sides are Christians. His lot is cast among them, and his clients must come from them. But, without high moral character, no matter what other qualities the lawyer may possess, abiding confidence from the public will not go out to him, and without such confidence success cannot come. The highest standard of morality, I repeat, is found in the Christian religion, and as above aptitude, equipment and singleness of devotion to the law is high moral character as a condition of success in it, the lawyer must turn for the development of such character where he will most certainly find it—in Christianity, in the Christianity which is part of the law of his land, part of the law to which, that he may succeed, he devotes himself and his life. We, perhaps, unless reminded, forget from time to time how the Christian religion is interwoven with our whole system of government. The greatest constitutional lawyer of his age has said: "There is nothing that we look for with more certainty than this general principle, that Christianity is part of the law of the land. This was the case among the Puritans of New England, the Episcopalians of the Southern States, the Pennsylvania Quakers, the Baptists, the mass of the followers of Whitefield and Wesley, and the Presbyterians; all brought and all adopted this great truth, and all have sustained it. And where there is any religious sentiment amongst men at all, this sentiment incorporates itself with the law. Everything declares it. The massive cathedral of the Catholic; the Episcopalian church, with its lofty spire pointing heavenward; the plain temple of the Quaker; the log church of the hardy pioneer of the wilderness; the mementos and memorials around and about us; the consecrated graveyards, their tombstones and epitaphs; their silent vaults, their moldering contents; all attest it. The dead prove it as well as the living. The generations that are gone before speak to it, and pronounce it from the tomb. We feel it. All, all, proclaim that Christianity, general, tolerant Christianity, Christianity independent of sects and parties, that Christianity to which the sword and the fagot are unknown, general, tolerant Christianity, is the law of the land." And there still lingers among the living an illustrious Chief Justice of the highest court of our own Commonwealth, who has spanned nearly a century of life, and who, after he had reached four score years and ten, and strength had still been vouchsafed to him, declared, in speaking of the settlement of our Atlantic coast: "In our northern half, whether settled by Swede or Dutch, French or Saxon, these settlers came under the sovereignty of Christian kings; and brought with them their religion as well as their possessions. They set up here no pagan, infidel or unknown gods, but, strengthened by Christian prayer, and elevated by Christian song, they erected on the strand, and in the wilderness, the Christian altar, and laid upon it the sacrifice, not of beasts or birds, but of true and faithful hearts, bathed in a Savior's redeeming love. This continent, there-

fore, became Christian when first discovered and settled." With such words from these great lawyers, whose lives have exemplified that high standard of morality to which I have referred, and whose supreme success in the forum, the Senate and on the bench has become part of the history of the State and nation, who will set for himself any lower standard?

I have referred to what may be justly regarded as the essential conditions of success. There are others, however, which, if not mentioned, might be properly considered. I would refer to the importance of such a life among his fellows that the fullest confidence will come to the lawyer from those from whom he most wishes it to come—his brothers in the law; and I would speak of what such confidence means, spreading through the lawyers to all the community for which they stand; I would speak of that evidence of the highest confidence of man in man, to be found only in our profession, in which the words of a lawyer's lips are and ought to be a sealed covenant, and to tell how the words of his mouth are an obligation not to be broken; that in contact with men in the trial of causes and in the examination of witnesses to ascertain the truth the lawyer should be ever mindful that his fellowman is truthful and does not willingly bear false witness; that tedious and undue cross-examination of the witness on the stand is understood by the jury to be an effort to swerve him from the truth—these and many other thoughts come to me, to be uttered in the hope that I may helpfully speak them to some one who hears me; but the passing hour will not permit. I can only add that, complying with the conditions of which I have spoken, no lawyer need fear failure, but can look hopefully forward to success.

A quarter of a century ago one, who was easily first among men, who had achieved honor and renown in his profession, and the highest eminence in the highest court of the Commonwealth, thus spoke to the great bar of Philadelphia, though not of its number: "The Bar—its associations and fellowships; its knightly and courteous contests; its brilliant display of wit and eloquence, of mental acumen and forensic learning; its love of right and manly independence; its kindly and ingenuous friendships—these are the true love of the lawyer, the guardian of his early ambition and the guiding star of his hope."

To these words may I add that success at the bar means success in those knightly contests for the right; participation in those displays of wit and eloquence, of mental acumen and forensic learning; a share in that love of right and manly independence; enjoyment of those kindly and ingenuous friendships; and it means what has always seemed to me to be worth more than all of these—peace in the evening with those who were with us in the arena through the day; for, out of our contests and rivalries, come neither wounds that last nor broken bonds of brotherhood. At twilight we cover the fires of each day's strife with the ashes of forgetfulness and charity, to be, perhaps, rekindled in the morning—but to burn only through the day until the last night shall come. Such success deserves ambition to succeed.

MOOT COURT.

ELDRED'S ESTATE.

Act 1855—Meaning of calendar month.

STATEMENT OF THE CASE.

Wm. Eldred died 9 A. M., August 11, 1889, leaving a will executed 6 P. M., July 11, 1889, in which he devised $25,000 to be invested for the support of a Tuesday evening religious service forever in the church (Protestant Episcopal) of which he was a member. The service he directed to consist of readings, hymns, prayers, and the Holy Communion, and he stated that his object was to secure benefits for himself after death, provision for such posthumous service being in his opinion a propitiation to the Almighty. On distribution of the estate the residuary legation contended that the legacy was void and demanded the money. The executor denied the validity of any legislation that hampered a testator's gifts to religion and denied that the gift was within any prohibition.

E. A. DELANEY and LORD for the residuary legatees.

1. The charitable bequest is void. A calendar month is one which is of unequal

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length according to the calendar, and of which twelve months make a year. 6 S. & R. 539, 3 S & R. 169; Parker's Estate, 14 W. N. C. 566.

SCHANZ and CRARY contra.

The bequest is valid. A calendar month means thirty days. Shapley v. Gary, 6 S. & R. 539; Thomas v. Shoemaker, 6 W. & S. 179.

The bequest is not a charitable but a religious one.

OPINION OF THE COURT.

The point to be decided in this case is, did the testator die within thirty (30) days after making the will?

The act of 1855, 11 sec. P. L. Digest, Vol. 1 537, says, "No estate, real or personal, shall hereafter be bequeathed, demised or conveyed to any body politic, or any person in trust for religious or charitable use, except the same be done by deed or will attested by two creditable and at the same time two disinterested witness at least one calendar month before the decease of the testator or alienor, and all disposition of property contrary hereto shall be void and go to the residuary legatees or demisees, next of kin or heirs according to law.

That this is a charitable or religious use I have no doubt, but granting that it is, that will not make it void if executed more than thirty (30) days before the testator's death.

The testator died August 11th, 1899, at 9 o'clock A. M., leaving a will executed at 6 o'clock P. M., July 11th, 1899. Had the testator lived until 6 o'clock P. M., August 11th, he would have lived 31 full days after making his will.

In computing the time the day on which the act was done must be excluded. Act June 20th, 1883; Harker v. Adds, 4 Pa. 515; McCready v. McGonem, 1 Kulp 475.

Deducting the 11 days from July we still have 20 days, adding the 11 days in August we have 31. To be more explicit, the thirty (30) days were up on the 10th of August at 6 P. M., but he did not die until the next day at 9 A. M. which gives us 15 hours over the thirty (30) days, from 9 A. M. till 6 P. M. is 9 hours, subtracting that from 24 leaves 15 hours, therefore we find the testator actually lived 30 days and 15 hours after the execution of the will, sufficient time to take it out of the statute.

The law does not regard fractions of a day. Duffy v. Ogden, 64 Pa. 240; Shlingbift v. Shoemaker, 2 W. N. C. 67; Bank v. Bank, 11 Mass. 204.

A calendar month is a month of 30 days and not as the plaintiff contended that varies with the calendar. Rymen's Appeal, 93 Pa. 142; Thomas v. Shoemaker, 6 U. S. 179.

After a careful perusal of the authority cited by the plaintiffs that "a calendar month is one that is of unequal length according to the calendar or almanac and of which 12 make a year," I cannot find anything in them that sustain that view.

In 6 S. &. R. cited by counsel for plaintiffs, C. J. Gibson says, "In England the month was considered lunar but they have ceased to so regard it, and at least in this country where the popular understanding on the subject is so entirely changed that in all translations and business of life, the month is universally estimated by the calendar; the lunar month never enters into the consideration of anyone." 6 S. &. R. 540.

As the act expressly states a gift to charity is void if made within thirty (30) days and we find he has lived more than the statutory period, we must sustain the will.

Judgment for the defendant.

ALOYSIUS C. MCINTIRE, J.

OPINION OF THE SUPERIOR COURT.

The act of April 26, 1855, 1 P. & L. 1444, makes void all devises to any person in trust for religious or charitable uses, unless the will be made "at least one calendar month before the decease of the testator." Eldred's will was written and executed at 6 P. M. on July 11th, 1889. He died at 9 o'clock A. M. on August 11th, 1889.

A "calendar month" is in this case the space between the day of the execution of the will and the same day of the next succeeding month. If the will had been executed on Feb. 3, a calendar month would have elapsed with March 3rd. The will having been made on July 11th, the following calendar month expired on August 11th. The learned court below is in error in saying that "a calendar month is a month of 30 days." The Standard Dictionary p. 267 correctly names as a second sense of calendar month, "a period equivalent to a month, as from Jan. 15th to Feb. 15th." Parker's Estate, 14 W. N. 566.

It is no less clear we think, that a full calendar month would run from the hour and minute of the day on which the event from which the computation is to be made to the same hour and minute on the same day of the next following month. The will was written at 6 o'clock in the afternoon of July 11th. A calendar month would elapse at 6 o'clock in the afternoon of August 11th.

The learned court below does not seem to have adverted to the expression in the act of April 26th, 1855, "*at least* one calendar month." The death of Eldred took place at 9 o'clock in the morning of August 11th. That was fifteen hours less than a calendar month. The act requires that the making of the will precede the death "at least one calendar month." It may precede by six or three or two, it *must* precede by at least one calendar month. The death of Eldred did not do so.

There are cases in which fractions of a day are treated as a full day or are ignored altogether. This is not a case, we think, for the adoption of a similar policy. The contest is between the heir and the devisee. If either is to be favored it is the former. The act of 1855 was intended to protect the heir from disherison, by a will procured from one who was enfeebled by disease and possibly unduly influenced by solicitations to buy his soul's peace at the expense of his wife and children or other kin. We think we carry out the policy of the state in requiring the full period in this case of 31 days to elapse between the making of the will and the testator's death.

The constitutionality of the act has been but feebly attacked. The constitution of Pennsylvania does not prohibit legislation that limits the amount of property to be devoted to religious uses. Although it is declared with the magniloquence so frequently characteristic of constitutions invented on this continent, whether Anglo-Saxon or Hispano-American, that "no human authority can, in any case whatever, control or interfere with the rights of conscience," 1 P. & L. 42, the courts may be confidently expected to refuse to consider the spending of one's money, posthumously, even for one's soul's salvation, a right of conscience. Should a Seventh Day Baptist or a Jew unfortunately feel it a duty to work on the first day of the week, he would be promptly advised that he had no right to such a sense of duty. Should he practice bigamy or expropriate others of their goods, on a plea, however honest, that his conscience required him to do so, he would be plainly taught that the will of the state was the sovereign even of his conscience. In Rhymer's Appeal, 93 Pa. 142, Sterrett, J,, expresses the opinion that "it has never been doubted that the act," i. e. of 1855 "is constitutional."

We think the devise to the church void, and that the money embraced in it is payable to the residuary legatee.

Decree reversed, with *procedendo*.

HORACE ANDERSON vs. VESUVIUS FIRE INSURANCE CO.

Insurable interest of owner of premises in house being erected thereon by contractor.

STATEMENT OF THE CASE.

Action on policy of insurance to recover damages alleged to have been caused by fire to 3 houses in process of construction for plaintiff. The houses were being erected on land of the plaintiff by a contractor, the terms of the contract being that the contractor was to furnish the materials and build the houses, to complete them by a time specified, for a specified sum to be paid within 10 days after their completion. At the time of the fire the houses were nearly complete, but no payment had been made to the contractor.

W. E. ELMES and J. H. RHODES for plaintiff.

The plaintiff had an insurable interest in the buildings. Foley v. Ins. Co., 152 N. Y. 131; Crittenden v. Ins. Co., 2 Forum 27; Riggs v. Ins. Co., 125 N. Y. 7; Ellmaker v. Ins. Co., 5 Pa. 183; Ins. Co. v. Robinson, 56 Pa. 256; Ins. Co. v. Meckes, 10 W. N. C. 306.

W. H. TRUDE and F. CONRY for defendant.

The destruction of the buildings caused a loss to the contractor and not to the plaintiff. Not having an insurable interest the plaintiff cannot recover. Ins. Co. v. Turnpike Co., 122 Pa. 37; Sweeney v. Ins. Co., 20 Pa. 337.

OPINION OF THE COURT.

The houses insured were being erected on land of the plaintiff and were nearly

complete at the time of the fire. The ownership of the land carried with it the ownership of the structures as they progressed, which, according to the general rule of law became part of the realty by annexation (Crest v. Jack, 3 Watts 238.). There was no intention on the part of either the owner or the contractor to sever the ownership of the structures from the ownership of the land while the work was in progress or that the contractor should retain title to the materials put into the buildings until completion or until paid for by the owner of the land. That the improvements may have cost the owner nothing, that he would not be bound to pay for the work done or materials furnished, or that the builder may still remain liable to the owner on the contract, does not make these structures any the less a part of the realty, and as a part of the realty they constitute an interest at once real, substantial and *insurable*, Foley v. Manufacturers' Fire Ins. Co., 152 N. Y. 131; Crittenden v. Farmers' Ins. Co., 2 Forum 27; Oakman v. Dorchester Mutual Fire Ins. Co., 98 Mass. 57; Sweeny v. The Franklin Fire Ins. Co., 20 Pa. 337.

Judgment is therefore entered for the plaintiff.

WARREN L. SHIPMAN, J.

CHARLES CLEMENTS vs. MARY A. WELSH.

Divorce—Misrepresentation as to having been married previously, as ground for divorce.

STATEMENT OF THE CASE.

The defendant, whose husband by whom she had a child, had procured a divorce from her in California on the ground of desertion, became a resident of Pennsylvania, where she became pregnant by plaintiff. In a conversation between them she represented that she had never been married. She gave birth to a child and afterwards they were married. Subsequently he learned of the earlier marriage but upon being told that the first husband had died before the second marriage, he continued to cohabit with her. Later, upon learning that first husband was still living and had been divorced from his wife, he ceased to cohabit with her, and now sues for decree of nullity of marriage.

J. WATSON and L. DELANEY for libellant.

The marriage was procured by fraud and the petitioner is entitled to a divorce. Act 8th May, 1854, 1 P. & L. Dig. 1634; Reynolds v. Reynolds, 3 Allen (Mass.) 605.

C. S. KLINE and A. S. LONGBOTTOM for respondent.

There was not such fraud as will furnish ground for a divorce. Allen's Appeal, 99 Pa. 199; Crehore v. Crehore, 97 Mass. 330; Foss v. Foss, 12 Allen 26; Bartholemew v. Bartholemew, 3 Dist. R. 557; Hoffman v. Hoffman, 30 Pa. 417; Todd v. Todd, 149 Pa. 60.

OPINION OF THE COURT.

By the first section of the Act of May 8, 1854; P. &. L. Dig. 1634, it is provided that "it shall be lawful for the courts of common pleas of this commonwealth to grant divorce where the alleged marriage was procured by fraud, force or coercion." By this language must of course be understood such fraud as would at common law render a marriage void. It is settled beyond all controversy, that fraud which would vitiate any other contract—even an executory contract to marry—will not have that effect when the marriage has actually been solemnized and consummated. It is not to be supposed that every error or mistake into which a person may fall concerning the character or qualities of a wife or husband, although occasioned by disingenuous or even false statements or practices, will afford sufficient reason for annulling an executed contract of marriage. Representations, in respect to the qualities of one of the contracting parties in his condition, rank, fortune, manners and character would be insufficient. The law makes no provisions for the relief of blind credulity however it may have been produced. The fraud, in order to warrant a decree, must be in what has sometimes been termed the essentialia of the contract. Allen's Appeal, 99 Pa. 196. While it is difficult to lay down any rule which can sharply define and distinguish what are and what are not essentials, yet it is well settled that want of chastity on the part of the woman, ante-nuptial incontinence, even though she may have expressly represented herself as virtuous, forms no ground for avoiding the contract. Hoffman v. Hoffman, 30 Pa. 417; Allen's Ap-

peal, supra; Foss v. Foss, 12 Allen 26. The law in the exercise of a wise and sound policy, seeks to render the contract of marriage when once executed, as far as possible indissoluble. The great object of marriage in a civilized and Christian community is to secure the existence and permanence of the family relation, and to insure the legitimacy of offspring. It would tend to defeat this object if mere misrepresentation such as this case discloses was allowed to be the basis of proceedings on which to found a dissolution of the marriage tie. Reynolds v. Reynolds, 3 Allen 605. If allegations as to prior chastity goes not to the essence of the contract and does not furnish a basis upon which to render a decree of dissolution, mere misrepresentations that a former husband is dead, when, in fact he is alive and his separation from his former wife is due to a divorce granted while they were residents of California, falls short of the essence of the contract. It advances not the morals or merits of society, to treat lightly or loosely the obligation of the matrimonial contract; a contract which, from its peculiar nature and on grounds of public policy, the law regards as especially sacred and inviolable. It cannot be avoided or set aside on the ground of fraud except on the most plenary and satisfactory proof of deceit and imposition touching matters which constitute the essentials of the marriage relation. Applying the general principles to the case in hand, it is apparent that the libel does not disclose a ground for divorce. It is not necessary that the case should go to the jury. Nonsuit awarded.

WILLIAM E. ELMES, J.

DEPOSIT BANK vs. DROVERS' BANK'S ASSIGNEE.

Right of agent for collection of payee of check to recover possession of check from drawee who has paid check by worthless instrument.

STATEMENT OF THE CASE.

John Jacobs held a check on the Drovers Bank, drawn by Wm. Hope, which he deposited with the Deposit Bank for collection. The bank placed it to his credit in his account. The Deposit Bank sent the check to the Drovers Bank which received it and gave the Deposit Bank a check on the Merchants Bank, where it had sufficient funds, the amount of the check equalling Jacobs' check and two others which had been in the hands of the Deposit Bank and presented to the Drovers Bank.

The next morning the check was presented to the Merchants Bank which refused to pay it because three hours before the Drovers Bank made an assignment for the benefit of creditors. The Deposit Bank then demanded the return of the checks of the assignee, of the Drovers Bank who refused. The intention of the former Bank was to sue the depositor upon the check, Wm. Hope.

W. S. CLARK and JOHN KEMP for plaintiff.

When drawee fails to pay check, he is not entitled to its possession. Possession is presumptive evidence of payment. Callahan v. Bank, 78 Ky. 604; Porter v. Nelson, 121 Pa. 628; Bracken v. Miller, 4 W. & S. 102; Conway v. Case, 22 Ill. 127.

The drawee did not "pay" here, for payment by a worthless check or note is no payment. Holmes v. Bank, 126 Mass. 353; Martin v. Pennock, 2 Pa. 376; Graham's Estate, 14 Phila. 280; Patton v. Ash, 7 S. & R. 116.

If the drawer of a check has neither funds nor credit in the bank on which it is drawn, its acceptance by the creditor does not constitute payment. Fleig v. Sleet, 43 O. S. 53; Tobey v. Barber, 5 John's (N. Y.) 68; Tanner v. Bank, 23 How. Pr. Rep. 399.

The plaintiff is entitled to the check, so as to sue its depositor as endorser. Rapp v. Bank, 136 Pa. 426; Peterson v. Bank, 52 206; Ry. Co. v. Johnston, 133 U. S. 566.

The plaintiff is entitled to the check as agent for its depositor. The depositor can sue the drawer on the check. The drawer is presumed to be solvent in such a case. Bank v. Bank, 77 N. Y. 320; Ingalls v. Lord, 1 Cowen 240.

W. A. VALENTINE and J. B. KENNEDY for defendant.

The plaintiff cannot recover the checks and thus secure a preference out of the assigned estate. The plaintiff's remedy is on the check given by the defendant. Venango Bank v. Taylor, 56 Pa. 14; Trickett on Assignments, p. 242. To permit a recovery would interfere with the distribution of the estate. Palm's Trust Estate, 3 Dist. 456; Fox's Appeal, 93 Pa. 417; Trickett on Assigns, p. 17.

OPINION OF THE COURT.

This case has been sent up as a case stated; after a careful inquiry into the facts we find them very unsatisfactory and incomplete, and it indeed becomes well nigh impossible to reach a legitimate conclusion, without making some presumptions which would hardly be warranted were the case stated more clearly and specifically.

The whole question seems to be, did the Deposit Bank accept the check on the Merchants Bank as payment for its own checks, or did it simply accept the check as a voucher, for the purpose of going down to the Merchants Bank and procuring the money, so in case there were insufficient funds there it could return and receive its own checks again. In the absence of any information on this point we must presume it to be an ordinary business transaction, and that the check on the Merchants Bank was received in payment for the three checks in dispute. Surely such would have been the case had the check been presented on the day of making, for on that day there were sufficient funds in the Bank to meet it.

In the language of the court in 1st National Bank of Northumberland v. McMichael: Bank checks are regarded as constituting by far the largest part of the practical currency of the business world, and are of the greatest possible consequence in commercial transactions. Regarding this check then in this light it follows that the natural supposition would be that it was given in payment of the three checks in dispute.

The check was good and worth its full face value. The Deposit Bank did not see fit to collect on that day but carried it over to the next day. In the meantime the check had depreciated in value through this assignment. Shall we then say this check was worthless and therefore no payment at all as the plaintiff alleges? This we cannot do. The check is not worthless as yet. The Deposit Bank's rights became fixed at the time of the assignment. The property of the Drovers Bank passed *Eo Instante* into the hands of the Assignee; from that time on the Deposit Bank was only an ordinary creditor of the assigned estate, entitled to their *pro rata* share in the distribution of the fund in the hands of the auditor.

W. B. GERY, J.

OPINION OF SUPERIOR COURT.

The Deposit Bank sent the check, which it had received from John Jacobs for collection, to the Drovers Bank on which it was drawn. The latter bank gave the former a check on the Merchants Bank where it had sufficient funds. This check was presented in due time, i. e. the next morning, but the Drovers Bank had practically withdrawn the fund from the Merchants Bank by assigning it with its other assets for the benefit of creditors, Zane Banking, p. 576. It must have been insolvent and been aware of its insolvency when the check was delivered. Had the check had value the Drovers Bank could have been compelled to surrender it to the Deposit Bank, because the check which it gave in exchange, it intended to make worthless and in fact made worthless by an assignment for the benefit of creditors before the presentment of the check was practicable. Com. Exchange Nat. Bank v. Loan and Trust Co., 188 Pa. 330.

On the other hand, the check has no value for the Drovers Bank. The bank would have extinguished it by paying it and would have had a right to retain it as evidence of proper payment in the settlement with the drawer, whose money the bank had on deposit. But not in fact paying this depositor's check, it could make no proper use of it. The check therefore seems to have had no value to the Drovers Bank nor to its assignee.

But the want of interest in it, on the part of the Drovers Bank, would not support this action of trespass. The Deposit Bank must show that it has a right to the possession and use of the check. As it has not been paid by the Drovers Bank, it is evident that the drawer, Wm. Hope, is *prima facie* liable on it, either to John Jacobs or to the Deposit Bank. He has lost his deposit by the insolvency of the bank, and if his check was not presented in due time, and if it having been presented in due time it would have been paid, the loss would fall, not on him but the holder of the check; National State Bank v. Weil, 141 Pa. 457. So far as appears, no delay

occurred in the presentment of the check. Jacobs left it with the Deposit Bank for collection; that bank sent it to the Drovers Bank. These acts were done, perhaps, in one day. The Deposit Bank might have insisted on payment in cash, or could have protested the check for non-payment. It accepted instead a check on the Merchants Bank, which it presented early the next morning. Nothing shows that more than twenty-four hours elapsed from the delivery of the check by Hope to Jacobs, and the dishonor of the check on the Merchants Bank. We are not prepared to say that Hope has been discharged by the acceptance, as conditional payment of the check on the Merchants Bank. There was no default of expedition that would cast the loss from Hope upon Jacobs or his endorsee. Rosenthal v. Ehrlicher, 154 Pa. 396; Nat State Bank v. Weil, 141 Pa. 457; Loux v Fox, 171 Pa. 68.

Does the right of action belong to Jacobs or to the Deposit Bank? The bank has given Jacobs credit for the check in his account. It has not attempted to revoke that credit. Until it does so, it is the owner of the check, and as respects Jacobs has the right of action on it. Nor do we think that it could revoke the credit if it wished to do so. The entry of the credit was, doubtless, intended to be provisional and revocable. But, the Deposit Bank on presenting the check to the Drovers Bank chose instead of cash, to accept a check on a third bank. The former bank must, as respects Jacobs, be regarded as having received payment. Merchants National Bank v. Goodman, 109 Pa. 422; Fifth National Bank v. Ashworth, 123 Pa. 212; Pepperday v. National Bank, 183 Pa. 519; Hazlett v. Commercial National Bank, 132 Pa. 118. It took the risk on itself of its ability to collect the check.

It follows that Hope has not been discharged from his liability as drawer upon the check by any facts heretofore considered and that the plaintiff is the owner of the right of action against him. It does not appear that the check was protested—protest is usual but unnecessary—nor that notice of its non-payment was duly given to Hope. As this is an action, not against Hope upon the check, but against the assignee of the Drovers Bank by the Deposit Bank, we think it unnecessary in order to sustain it, to show that the procedure presented by the law merchant has been pursued. The defendant has no right to the check nor is it of any value to him. The plaintiff has a *prima facie* right to it. He is entitled at least to nominal damages.

Judgment reversed.

JAMES CRAWFORD vs. WILLIAM WEAVER.

Proceedings to vacate premises, under Act of 1863, before J. P.—No jurisdiction where length of term is uncertain and indefinite.

C. A. PIPER and SAM'L E. BASEHORE for plaintiff.

The tenant cannot deny the landlord's title. Miller v. McBrier, 14 S. & R. 382.

The proceedings are properly brought under the Act of Dec. 14, 1863.

W. L. SHIPMAN and DAN. KLINE for defendant.

Where the termination of the tenancy depends upon a contingency and is uncertain, the landlord and tenant Act does not apply. Steel v. Thompson, 3 P. & W. 34.

A lease for a term certain and thereafter to continue at the will of the lessee is a perpetual lease. Effinger v. Lewis, 32 Pa. 367; Myers v. Coal Co., 126 Pa. 601; Lewis v. Effinger, 30 Pa. 281.

OPINION OF THE COURT.

This is an appeal from the decision of a Justice, who entered judgment for the plaintiff.

The first question to be considered is whether the agreement between the parties could operate as a lease. While the question is not free from doubt, we are however of the opinion that the agreement is not void on account of uncertainty of the term. The defendant was to remain on the premises until he could sell his bakery. In Clark v. Rhoads, 79 Ind. 842, a lease to operate until the lessor should sell the land was held sufficiently certain to define a term, and in Kengel v. Painter, 166 Pa. 592, an agreement that the occupant of property was to continue in possession so long as the same shall be used for R. R. purposes was held to be sufficiently definite in its nature to satisfy the requirements of a good lease.

The second contention of plaintiff's

counsel, that the lessor could not make a valid lease before the deed was delivered is more meritorious. The testimony shows that the agreement purporting to be a lease was executed before the delivery of the deed. We are of the opinion that a valid lease cannot be made under such circumstances. Hall v. Benner, 1 P. & W. 407. We therefore hold that the lease is not valid.

The next question to be considered is whether the Landlord and Tenant act of 1863 applies to this case. While counsel have not referred us to any cases construing this act, yet portions of it are so similar to parts of the Landlord and Tenant act of 1772 that the cases decided under the latter act aid us materially in reaching a conclusion as to the applicability of the act of 1863. Having already decided that the agreement is not a valid lease, it seems clear that there has been no such letting as is contemplated by the act. In Steele v. Thompson, 3 P. & W. 34, it was held that the Landlord and Tenant act only applies to the plain and ordinary case of a demise at a certain fixed rental.

Moreover the plaintiff must show to the justice that he had demised the premises for a term *fully ended.*

As the defendant had not sold his bakery it is apparent that even if the agreement be regarded as a valid lease the plaintiff has not shown the facts necessary to give the justice jurisdiction. Steele v. Thompson, supra. Judgment must therefore be entered for the defendant.

WILL W. JOHNSTON, J.

OPINION OF THE SUPERIOR COURT.

William Weaver, owning a bakery and a residence in Edwardsville, received an application from Crawford for the purchase of the residence. Weaver agreed to sell it for $3,300. The deed was executed and delivered on June 4th, 1900. On the same day, but before the delivery of the deed, this agreement was written and executed: "This agreement made this 4th day of June, 1900, between James Crawford of the first part and Wm. Weaver of the second part, witnesseth that the party of the first part agrees to leave the party of the second part remain on the premises which I have this day purchased from the party of the second part until he, the said party of the second part, can sell his bakery property on Central street, Edwardsville, Pa. Party of the second part (Wm. Weaver) is to pay ten dollars per month rent, including October, 1900, and if he remains after October 30th, 1900, he is to pay a rent of twelve dollars per month as long as he shall occupy the premises." This was signed by James Crawford and William Weaver, and sealed with their respective seals.

Weaver continued in possession of the residence, paying rent at $10 per month to Nov. 4th, 1900, and at $12 per month from Nov. 4th, 1900, to April 4th, 1901. The house, it seems, was worth from $15 to $18 a month. On Dec. 6th, 1900, Crawford served written notice on Weaver to vacate the premises "at the end of your current term, to-wit, April 1st. 1901."

Disregarding this notice, Weaver not having, so far as appears, sold the bakery, or been able to sell it, continued in possession of the residence beyond April 1st, 1901, whereupon Crawford began proceedings before a justice of the peace, under the Act of Dec. 14th, 1863, for the recovery of possession. The justice having entered a judgment for Crawford, Weaver appealed to the common pleas and that court has reversed the judgment.

The Act of Dec. 14th, 1863, confers its remedy upon the landlord when there has been a lease or demise to any person "for a term of one or more years, or at will."

The Act of March 6th, 1872, 1 P. & L. 2654, declares it shall not be lawful to pursue the remedy of the Act of 1863, unless there is "a written lease or contract in renting," or "a parol agreement," "in and by which the relation of landlord and tenant is established between the parties, and a certain rent is therein reserved." Under the earlier act, the lease must have been for a year, or for years, or at will. The later requires simply that it shall create the relation of landlord and tenant and stipulate for a certain rent. We think the agreement between Crawford and Weaver establishes the relation of landlord and tenant. The rent reserved is certain. The agreement is a "lease or contract."

The lease, however, is until Weaver "can sell his bakery." If this is equiva-

lent to until Weaver *does* sell his bakery, the lease is practically one for as long as Weaver may choose. Such a lease would be valid, Effinger v. Lewis, 32 Pa. 367; Lewis v. Effinger, 30 Pa. 281; Myers v. Kingston Coal Co., 126 Pa. 582. It is probable, however, that the parties contemplated that the sale should be made within a comparatively short time. Weaver was under a duty reasonably to endeavor to find a purchaser, and to offer to sell on reasonable terms and at a reasonable price. A just interpretation of the contract will make it mean that he is to occupy the premises no longer than may be necessary in order to effect the sale. He may, however, occupy them so long. This being the sense of the contract, we think there are two objections to the proceedings before the justice.

1. There is no evidence that on April 1st, 1901, the time of the permissible occupancy of Weaver had expired. What efforts he had made to find a purchaser, if any; whether he had advertised; what the price demanded was, remains wholly undisclosed. That no sale *has* been made is clear. That any sale could have been made does not appear. The time, then, for his vacation of the premises does not seem to have arrived on April 1st, 1901.

2. It was not the intention of the Act of 1863, and its supplements, to confer jurisdiction on a justice to oust a tenant when his right to remain depended on facts requiring careful and exact scrutiny. The Act requires a "certain rent" to have been reserved. This, says Sterrett J., excludes cases "where the rent reserved is so uncertain as to require the intervention of a jury to render it certain." Davis v. Davis, 115, 261. It could not have been intended to confide in a single justice the right to expel a tenant from the possession of the leasehold on his judgment as to whether the possibility of making a sale of a house had occurred. We seriously question whether the justice may eject a tenant in any case in which the lease is not for a term of years, at will, from year to year, or until the happening of an objective and easily discernible event.

Crawford notified Weaver to vacate the premises at the end of his current term, to-wit, April 1st, 1901. We are at a loss to understand the theory on which this notice was given. The evidence of Crawford and wife before the justice was, that Weaver, after the delivery of the deed, orally agreed to "remain in the house for three months from June 4th, at $10 per month and one month after at $12." In that view, the term would have expired Oct. 4th, 1900.

If the theory to be adopted were, that Weaver was a tenant from month to month, the notice to him on Dec. 6th, 1900, to vacate the house on the following April 1st would scarcely be explicable. April 1st was not the end of "your current term," nor could it be made such by the notice. The months would expire on the 4th day of each calendar month.

The Act of 1863 requires that 3 months' notice of the landlord's intention to have again and repossess the demised premises, should be given to the tenant. As this notice must be given three months at least before the end of the term, it is evident that a term is intended whose end can be foreseen for three months. We have already intimated that we do not think a lease running until an event occurs, not in the power of the landlord and not previsable, is such as the statute contemplates. The notice of Dec. 6, 1900, does not indicate a time for the vacation of the premises, when it was the duty of Weaver to vacate them. Although, had Weaver been under duty to retire on April 1st, 1901, the notice more than three months before that day would have been valid, (Snyder v. Carfrey, 54 Pa. 90) there is nothing that justifies us in saying that Weaver was on that day under any duty to remove.

The judgment of the learned Court of Common Pleas, reversing the judgment of the justice, is affirmed.

COM. OF PENNSYLVANIA TO USE OF EDITH EDWARDS vs. GEORGE MARTIN ET AL.

Liability of notary public who makes false certificate as to acknowledgment of deed —Present law as to separate acknowledgment of married woman.

STATEMENT OF THE CASE.

Fred. Edwards, a married man, contracted to sell his homestead to John Ber-

win for $20,000, and the deed was duly signed, sealed and acknowledged by Edwards. His wife, Edith Edwards, through fear of bodily harm, also signed and sealed the deed, and then, for the purpose of having her acknowledgment taken, was subsequently called on by Martin, a notary public, who was in the same office as her husband. The wife, being examined separate and apart from her husband, acknowledged the signature to be hers, but told the notary, Martin, that she signed the deed unwillingly. He stated to her, "In that case it is an illegal deed." She replied, "I am glad of that, as it will enable me to fight it hereafter."

The notary departed, and subsequently duly certified in the usual form for a married woman that Edith Edwards had acknowledged the deed, making no mention whatever of her objections. The deed was thereupon delivered to Berwin, who paid the consideration, and entered into possession. Berwin had no knowledge of the position of Edith Edwards, who took no steps to have the deed set aside during her husband's life through fear. Fred. Edwards died five years after the delivery of the deed, leaving no issue, but leaving to survive him his wife, Edith. The property has meanwhile doubled in value.

Edith Edwards now brings this action against George Martin, notary public, and his sureties, Wm. McArthur and Edwin Thompson, on his official bond, for damages sustained by her.

F. J. HELRIEGEL and S. KAUFFMAN for plaintiff.

As against an innocent purchaser, the certificate of acknowledgment is conclusive as to the facts therein set forth. Williams v. Baker, 71 Pa. 477; Louden v. Blythe, 16 Pa. 532; Hall v. Patterson, 51 Pa. 290.

The notary is liable on his bond for making a false certificate. Act 5 March, 1791, 2 P. & L. 3240; Act 28 March, 1803, 2 P. & L. 4307; 16 Am. & Eng. Encyc. of Law, 779; Vanderwater v. Williamson, 13 Phila. 142; Overacre v. Blake, 82 Cal. 77; Stevenson v. Brasher, 90 Ky. 23; Cameron v. Calkins, 44 Mich. 531.

R. H. LAMBERT and A. M. HOAGLAND for defendant.

Since Act of 1893 a separate acknowledgment is not necessary. Reed's Estate, 3 Dist. 503. The certificate of a notary as to an acknowledgment is a judicial act, and he is liable only in cases where he acts fraudulently. Com. v. Haines, 97 Pa. 228; Oppeheimer v. Wright, 106 Pa. 569; Assoc. v. Sowers, 134 Pa. 354; Assoc. v. Heiser, 150 Pa. 514.

OPINION OF THE COURT.

The duties, obligations and powers of a notary in Pennsylvania are well defined by the statutes—2 P. & L. 3237, and among them is the power "to take and receive the separate examination of any *femme covert* touching or concerning her right of dower, or the conveyance of her estate or right in or to any such lands, tenements or hereditaments." 2 P. & L. 3243. This mode of acknowledgment is her only safeguard against being deprived of her property without her consent, or by the threats or ill-treatment of a cruel husband. For, as between herself and an innocent purchaser, the certificate of the notary is conclusive evidence of the acknowledgment. 71 Pa. 477; 16 Pa. 532; 51 Pa. 289. Hence, it necessarily arises, that to make a valid acknowledgment it must be shown that she made it with her own free will, that no fraud or duress was practiced upon her, and that she had a full knowledge of the paper's contents. 27 Pa. 22; 9 Pa. 14.

For breach of his official duty a notary may be "sued by any party or parties injured, and with the like effect as bonds given by sheriffs and coroners for the faithful execution of their respective offices." 2 P. & L. 3240. Also, in 2 P. & L. 4307, we find that "where the Commonwealth or any individual shall be aggrieved by the misconduct of any sheriff or coroner, it shall be lawful to institute actions of debt against such sheriff or coroner and their sureties upon such obligations." Hence, it appears that a notary is liable upon his official bond for a breach of his official duty. 13 Phila. 142.

In the case at bar Martin made the acknowledgment without Mrs. Edwards' consent, and in the face of statements made by her that ought to put an ordinarily prudent notary on his guard, and which would stop him from acknowledging until he was sure that Mrs. Edwards was acting according to the dictates of her own free will.

We think that Martin is guilty of a breach of his official duty, and he therefore is liable on his official bond.

Judgment for the plaintiff.

ROBERT H. MOON, J.

OPINION OF THE SUPREME COURT.

This is an action upon the official bond of George Martin, a notary public. The use-plaintiff alleges that she has suffered damage on account of a false certificate upon a deed for land of her husband, signed and sealed by him and her, whereby the notary certified that being examined separate and apart from her husband, she acknowledged that she executed it freely and without coercion or compulsion of her husband.

The husband has died, and Mrs. Edith Edwards would now be entitled to dower in one-half of the land had the conveyance not been made. She apparently claims, as damages, the value of this dower.

The defendant contends that, since the Act of June 8, 1893, P. L. 344, a separate acknowledgment is unnecessary, and, therefore, that no harm has been wrought by the certificate, even if false. In an able opinion Judge Stewart, in Reed's Estate, 3 D. R. 503, reached the conclusion that a separate acknowledgment by a married woman of a deed is no longer required. In Bingler v. Bowman, 194 Pa. 210, however, a contrary result was reached by Justice Mitchell, who holds that since the Act of 1893, as well as before, the conveyance by a married woman must be both joined in by the husband, and acknowledged separate and apart from him. *Cf.* Whitlinger v. Jack, 16 Pa. C. C. 112. This is true, when the conveyance is of her own property. It is assumed that it is *a fortiori* true, when the conveyance is in substance a release of her dower in her husband's lands. 194 Pa. 210; Kaiser's Estate, 14 Superior 155. It may be here remarked that the Act of April 4, 1901, declaring that acknowledgments by a married woman of any deeds shall be taken "in the same manner and form as though said married woman were *femme sole*," and shall, when so taken, "have the same force and effect as if taken separate and apart from the husband of said married woman," seems to render separate acknowledgments superfluous; but does not dispense with some acknowledgment.

The acknowledgment made by Mrs. Edwards was therefore necessary to the validity of her release of her dower. The certificate of it was as to a grantee, or one obtaining ownership from the grantee in ignorance of its falsity, conclusive against her of all matters averred in it, concerning the voluntariness of her execution of the deed. Heilman v. Kroh, 155 Pa. 1; Trust Co. v. Kline, 192 Pa. 1. It follows that Mrs. Edwards cannot now effectually assert a right to dower in her late husband's land. Can she then look for indemnity to the notary?

The notary, in receiving acknowledgments, exercises a judicial office, and partakes to a degree in the exemption from liability, which judicial officers enjoy in respect to errors committed by them. If, *e. g.*, he mistakes one who personates X, for X, and certifies to the acknowledgment by X of a deed purporting to be his, when in fact the acknowledgment is made by the personator, he will not be liable if he exercised good faith; if he was not guilty of a "clear and intentional dereliction of duty." Com. v. Haines, 97 Pa. 228. But, if he is guilty of such dereliction, he ought to be, and will be, responsible for the consequences of it.

Mrs. Edwards told the notary that she had signed the deed unwillingly. He understood her, and he understood the legal effect of what she said, for he replied, "In that case, it is an illegal deed." Her reply left him under no illusion as to her intention to dispute the validity of the deed. She had no reason to think that the notary, after his remark to her, would falsely certify the deed. She had done all she was called on to do, if she intended not to be bound by it. When, then, Martin certified that Mrs. Edwards had acknowledged the deed to be freely executed by her, he was conscious that he was certifying to a falsehood; and he knew that by such certificate he was depriving Mrs. Edwards of power successfully to claim dower in her husband's land. For the effects of this act he ought to be, he is, liable to indemnify her. The law had set him between her husband and herself, to prevent spoliation by the former of her interests in his land. Instead of doing his duty in this regard, he has betrayed her.

As no point has been made concerning the measure of damages, we refrain from discussing this question.

Judgment affirmed.

HIRSH *ET AL* vs. LLOYD.

Rights of adjoining owners in non-navigable lake.

STATEMENT OF THE CASE.

Abraham Lloyd is the owner of a large tract of land, a portion of which is covered by a body of water known as Lily Lake. The lake is fed by subterranean springs and by a small stream that flows from an adjoining mountain. On the western side of the lake there is an outlet and the water that flows through this outlet forms a small stream that flows down the mountain and empties into the Susquehanna River. A small portion of the lake, on the northeastern corner, covers the plaintiffs' lands. Before plaintiffs purchased the land, Lloyd erected on the shores of the lake a large hotel, several cottages and at a considerable expense improved the ground surrounding the buildings. As a result of the improvements the lake became popular as a summer resort. After the lake attained its popularity the plaintiffs purchased from an adjoining property owner the land on the northeastern corner. They also erected cottages, improved the ground surrounding them and sailed their boats and launches on the portion of the lake that covered Lloyd's land. Lloyd notified them to discontinue but they refused. He then erected on the line dividing the water on his land from that on the plaintiffs' land a boom, thus preventing the plaintiffs from sailing their boats on the main portion of the lake. A preliminary injunction was granted restraining Lloyd from maintaining the boom. The court then granted a rule to show cause why the injunction should not be made perpetual.

J. O. ADAMSON and W. S. DETRICK for plaintiff.

The lake is a natural body of water and the adjacent owners have title to low water mark only. The right to travel upon the lake is open to the public. Waterman v. Johnson, 13 Pick. 361; Prim v. Wallace, 38 Mo. 99; Filmer v. Williams, 122 Pa. 191; West Roxbury v. Stoddard, 7 Allen 167; Canal Commrs. v. People, 5 Wend. 446.

R. J. BORYER and M. B. STERRETT for defendant.

The lake being non-navigable, the adjacent ownership extends to the soil beneath the lake. 140 U. S. 341; 32 N. J. L. 369; 134 N. Y. 355; 34 Conn. 462.

The defendant has the right to reserve the privileges of boating and fishing upon the lake. Mitchell's Pa. Real Estate, p. 21.

OPINION OF THE COURT.

There seems to be no dispute as to the ownership of the land which surrounds and is covered by the waters of Lily Lake. The absolute title is in the plaintiffs and defendant and the land of each is described by metes and bounds.

The question of primary significance is whether the lake is public or private. If this is a public stream then the plaintiffs are entitled to a perpetual injunction to restrain the defendant from maintaining his boom.

At the common law those streams only are considered navigable in which the tide ebbs and flows; this is also the doctrine in several of the United States. In Pennsylvania navigability in fact, not the ebb and flow of the tide, is made the test by which the character of a stream as public or private is determined, and the great but tideless rivers of the state are therefore held to be public highways, belonging to the state and held for the use of all her citizens. Stover v. Jack, 60 Pa. 339; Fulmer v. Williams, 122 Pa. 191.

A navigable stream is one which affords a passage to vessels. Lily Lake is fed by subterranean springs and by a small stream and its only outlet forms a small brook that flows down the mountain side. It is a fact that only row boats were used on the Lake and it cannot be said that it was navigable in the common sense of the term.

A lake which is not really useful for navigation, although of considerable size compared with ordinary fresh water streams, may be private property. Lembeck v. Nye, 47 Ohio St. 336. The bed of the lake being private property the public has no right to fish in and boat upon its waters. Lembeck v. Nye, supra; Haupt's Appeal, 125 Pa. 224. As soon as the plaintiffs sail their boats upon that part of the lake the bed of which belongs to the defendant, they become trespassers and are liable in damages; not because the latter has any ownership in the water which covers his land but because the former have no right of access to it.

It is a principle of the common law that there can be no ownership in the flowing

water of a stream. Mayor v. Commissioners, 7 Pa. 363; Haupt's Appeal, supra; Penna. R. R. Co. v. Miller, 112 Pa. 34; 2 Bl. Com. 14. But an upper riparian owner has the right to use the water for household purposes and for watering stock, and also for manufacturing and other purposes, to an extent that is not unreasonable bearing in mind the size of the stream. Wheatley v. Chrisman, 24 Pa. 298; Irving v. Borough of Media, 194 Pa. 648; Penna. R. R. Co. v. Miller, supra. Where there is a defined stream, whether over or below the surface, the upper owner has no right unreasonably to divert the water to the injury of a lower owner. Brown v. Kistler, 190 Pa. 499. On this account the plaintiffs cannot complain for it has not been shown that the defendant by erecting his boom has diverted the water from its usual course. For the above reasons the rule must be discharged.

SAM'L E. BASEHORE, J.

JAMES THORNE vs. LUMBERMEN'S BANK.

Banks—Checks—Sub-agents.

STATEMENT OF THE CASE.

Thorne was payee on a draft for $2,000, drawn by Amos Shoop upon Charles Nailer, at 90 days. Nailer lived in Pittsburg, Thorne deposited the draft with the defendant, a bank in Potter county, for collection. The bank sent it to a bank in Pittsburg which presented it for payment and took Nailer's check for the amount, drawn on a bank in Williamsport, payable to the Lumbermen's Bank. The Lumbermen's Bank, informed of this, entered a credit for $2,000 to the deposit of Thorne. Two days afterwards the defendant was informed that the check was rejected by the Williamsport Bank for want of funds of the drawer, and the defendant debited Thorne's account with the $2,000. Its right to do this is disputed by Thorne who brings assumpsit for the $2,000.

ALEXANDER and MITCHELL for plaintiff.

Collecting bank has no right, unless authorized to do so, to accept anything in lieu of money in collection for draft from purchaser or sub-agent employed. Bank v. Goodman, 109 Pa. 422; Bank v. Ashworth, 123 Pa. 212; Hazlett v. Bank, 132 Pa. 118.

Defendant bank had no right to charge back the credit, and it could not relieve itself from doing so, from liability for amount thereof, to the depositor. Pepperday v. Bank, 183 Pa. 519.

GRAUL and HOLCOMB for defendant.

Where amount of check left with bank for collection is credited as cash, it may be charged back in case check turns out to be worthless. Raff v. Bank, 136 Pa. 426; Hazlitt v. Bank, 132 Pa. 118; Holmes v. Briggs, 131 Pa. 233.

Collecting bank is liable only when negligent in appointing sub-agent.

OPINION OF THE COURT.

Notwithstanding the cases which the defendant's counsel has cited to substantiate their statement a collecting bank is liable only when negligent in selecting a sub-agent for collection, we cannot see that the Supreme Court of this State has ever squarely ruled as they contend. In every case which they have cited there were other circumstances than a mere agency to collect on which the decision is based, or the agency was to transmit for collection.

But granting their contention, we do not think it is a good defense in this case. If the Lumbermen's Bank had not accepted the check payable to itself the contention would prevail, but as it has chosen to accept such a check it must suffer the consequences. The Pittsburg Bank had no right to take anything but money in payment of the draft. National Bank v. Goodman, 109 Pa. 422; Bank v. Ashworth, 123 Pa. 212; Hazlett v. Bank, 132 Pa. 118. By accepting the check it committed a wrong. The Lumbermen's Bank in turn accepted the check from the Pittsburg Bank, co-operated in the wrong and is liable therefor.

The defendant also contends that where a check is left at a bank for collection and the owner of the check is given credit for the amount thereof on his deposit account, such amount may be charged back if the check turns out to be worthless. The principle is correct but it is not applicable to the case at bar. It applies only where the *owner* of a check has *deposited* it with the bank for collection. In the case at bar the plaintiff was not the holder of the check in question and he did not deposit it for collection. The check was drawn

payable to the defendant and was therefore his property. He might do with it as he chose. Only by indorsement could it have become the plaintiff's. It was never thus indorsed. The defendant assumed the check itself and thereby assumed its collection. In Pepperday v. National Bank, 183 Pa. 519, a case closely analogous to the case at bar, Justice Green said, "We know of no principle upon which it can charge back to him a check which he never saw, never owned, never had any interest in and upon which his name never did and does not now appear, either as drawer, payee, indorser or in any other manner."

Judgment for the plaintiff.

W. T. STAUFFER, J.

ADAM CROSSMAN vs. JOHN STORM.

"Blasting"—"Independent contractor."

STATEMENT OF THE CASE.

Action in trespass to recover damages for an injury to plaintiff's property by the blasting of rocks upon adjoining land of the defendant. The work was in the hands of Smith, who had the contract to erect a building for the defendant. The contract contemplated that blasting would be necessary, and the place where it was done was within three or four feet of the line between plaintiff and defendant, and about eight or nine feet from plaintiff's house. Judgment for defendant. Plaintiff moves for new trial.

CONRY and WELSH for plaintiff.

The blasting to danger of neighborhood was a nuisance. 127 Mass. 481; 2 N. Y. 159; 3 Gray 349.

Principal is liable for damage. 156 Mass. 474; 149 Mass. 340; 63 Conn. 495; 22 W. N. C. 32.

GERBER and BROCK for defendant.

Owner of premises is not liable for injuries caused by independent contractor. Berg v. Parsons, 156 N. Y. 109; Raemer v. Shriker, 142 N. Y. 134.

Plaintiff has not shown that due care was not used. Borth v. Rome, 140 N. Y. 267.

OPINION OF THE COURT.

This is an action in trespass to recover damages for an injury to the plaintiff's property by the blasting of rocks upon adjoining land of the defendant. The work was in the hands of Smith, who is conceded by both parties to be an independent contractor. The contract was to erect a building for the defendant, and it contemplated that blasting would be necessary, and the place where it was done was within three or four feet of the line of separation between the two properties, and about eight or nine feet from the plaintiff's house.

The defendants wish to excuse their liability to the plaintiff on the ground that the work was in the hands of an independent contractor. They succeeded in persuading us at the trial that such is the law. But we believe that we erred in so deciding, because we think that in many like cases such laws would work injustice to land-owners.

It certainly is not the law of Pennsylvania that one party can erect a house, though on his own premises, but so near to the property of another, where blasting is absolutely necessary, and although all due care is used, the property of an adjoining land-owner is entirely destroyed, without compensating the owner of the destroyed property. The defendants would tell us that such is the case for the purpose of improvement of property. If this were true, would not land-owners be deterred from building if their houses could be destroyed by other land-owners with impunity? Then we think that in this case the question of negligence is not to be considered, since the direct act, and not a collateral act of the contract, was the act complained of. Since the defendant would be liable if he did the work with his own hands, he certainly cannot excuse himself by placing the work in the hands of an independent contractor, although of good reputation as such, and then tell the plaintiff to look to the contractor, who may be insolvent or out of reach, for compensation. We think that a person cannot himself or allow another to do a direct act which will necessarily damage the property of another, although all due care is used, without compensating the injured party.

We think that 111 Pa. 316, Edmundson v. Railroad Co., does not apply in this case, because the act complained of was not an act required by the contract.

In Mahony Township v. Scholly, 84 Pa. 136, the court said, whether the building was constructed by the defendant or by the contractor, the defendant is liable, as it would be poor grace to send the plaintiff to some contractor, who may be insolvent, for his compensation.

The courts of different States have held that where the act complained of was an act required to be done by the terms of the contract, the act itself being dangerous, the defendant cannot shift his liability. Tiffin v. McCormack, 34 Ohio 368; 63 Conn. 455; 156 Mass. 474; 127 Mass. 403; 149 Mass. 340; Wetherbee v. Partridge, 175 Mass. 185. We think, under the consideration of these cases and of justice between man and man, the verdict must be set aside and a new trial granted.

FRANK RHODES, J.

OPINION OF THE SUPREME COURT.

Storm made a contract with Smith for the erection, by the latter, upon the land of the former, of a house. The contract contemplated the necessity of blasting. On the adjacent lot stood the house of Crossman. Smith, in the prosecution of the work, blasted rocks at a point within four feet of the boundary line, and within nine feet of Crossman's house. The house was in some way, and to some degree, injured. How, or how much, does not appear.

It does not appear whether Smith was negligent or unskillful, unless we are compelled to infer want of care or skill from the fact that injury followed the blasting. We know no reason for making such an inference from such a premise. Possibly there would be a liability on the part of Smith, independently of skill or care. It might be that, as one who keeps a lion or tiger, or a reservoir of water, or a fire, on his premises, is, according to some opinions, bound to prevent their escape —Cooley, Torts, 397, 410; Fletcher v. Ryland, 1 Exch. 265; 3 H. L. Cases 330; or one who has a cesspool on his land must, at his peril, prevent its contents invading his neighbor's land—Cooley, Torts, 673; so one who, for whatever legitimate purpose, explodes rocks on his land, must, at his peril, prevent their fragments from doing mischief on his neighbor's land. We do not feel called upon now to decide this question.

The ground of defense in the court below was, that the man who exploded the rocks, and caused damage to Crossman's house, either by the vibrations or the impact of the pieces of rock, was not Storm, but Smith. It does not appear that the blasting could not have been done without the consequence, nor that the particular mode of blasting adopted by Smith was dictated by Storm. Smith "had the contract to erect a building for the defendant." The blasting was done by him in the process of the performance of this contract. The sole question then is, whether we are to impute Smith's act to Storm.

It is not the doctrine of the law, that generally the sin of one man is to be imputed to another. Every man must bear his own burden. The relations are few in which the act of one is treated, for the purpose of adjudging liability, as the act of another. Some acts of a child, or of a wife, have been attributed to parent or husband. Acts of a servant are imputed to the master. In a broad sense, Smith was the servant of Storm. He did what he did for Storm; under an impulse emanating from Storm, for a compensation to be paid by Storm. But the principle is fairly well established, that an "independent contractor," though acting for his co-contractor, is not to be esteemed his servant, nor are his acts determined by his own discretion, to be causally referred to such co-contractor. Allen v. Willard, 57 Pa. 300; Edmundson v. P. W. & Y. R. R. Co., 111 Pa. 316; Gunther v. Yorkville Borough, 3 Superior 403; Painter v. Pittsburg, 46 Pa. 213; Hookey v. Oakdale Borough, 5 Superior 404; Eby v. Lebanon County, 166 Pa. 632. In Berberich v. Beach, 131 Pa. 165, a wall was built on A's land, which fell, and in so doing crushed in the house on B's land. The building had been done, not by A, but by a contractor. A's immunity from liability was affirmed. A caused the wall to be built, but it might have been so built as not to have fallen down. B was deemed the ultimate cause of the fall. Storm, let us suppose, caused the blasting to be done; but, so far as appears, blasting might have been effectually done without damaging the

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neighboring house. We are not able to find that Storm dictated or contracted for the particular blasting that was done, or for any blasting that would necessarily or probably be followed by the harm to Crossman.

We think that the court at the trial properly refused to allow the jury, upon the evidence, to find a verdict against the defendant, but that in setting aside the verdict, directing a new trial, and, at the new trial, suffering a verdict to be received against the defendant, and in entering a judgment thereon, grave error was committed.

Judgment reversed.

GEO. DENSMORE vs. WM. KINGDON

Party Walls—Act April 10, 1849—Covenants.

STATEMENT OF THE CASE.

Plaintiff owned two adjoining lots. He built on lot "A" and conveyed it to one Gray. Lot "B" he conveyed unimproved to one Bartlett, the deed providing that the grantee in accepting it agreed for himself, his heirs and assigns, to pay plaintiff one hundred dollars ($100) for so much of party wall standing on land as he might use. Defendant subsequently bought both lots and used the party wall. Action on the covenant.

HELRIEGEL for plaintiff.

Right to reimbursement for use of party wall is personal to first builder. Todd v. Stokes, 10 Pa. 155; Davis v. Harris, 9 Pa. 501.

Acceptance of deed and enjoyment of the estate estops defendant from denying covenant. Dock Co. v. Learit, 54 N. Y. 35; Columbia College v. Lynch, 70 N. Y. 440.

PEIGHTEL and LAMBERT for defendant.

Right of payment for use of wall passed to Gray and his assigns and plaintiff's right is ended. Voight v. Wallace, 179 Pa. 520.

Right to party wall passes to grantee of land. Knight v. Bunker, 30 Pa. 372; Act April 10, 1849.

OPINION OF THE COURT.

We think this case is governed by Voight v. Wallace, 179 Pa. 520, which seems to be a parallel case.

The facts of that case are: Voight, the owner of a lot, built on one part of it, and then conveyed the other part to Fisher, making the middle line of the wall of the building which he had erected the dividing line between the two lots, calling it a party wall in the description and stipulation in the deed that the grantee, his heirs or assigns, should not make use of the wall for building a stipulated price therefore to Voight, the plaintiff. He then conveyed the lot with the building on to Wallace, who subsequently purchased the lot from Fisher, and used the party wall.

The act of 1849 provides, "In all conveyances of houses and buildings the right to and compensation for the party wall built thereunto shall be taken to have passed to the purchaser unless otherwise expressed." Since the passage of this act the right of the first builder to a party wall is considered an interest in the realty which passes to the grantee of the land, 30 Pa. 372. Therefore, the right of Densmore to payment when it should be used passed by subsequent conveyances to Kingdon, and became vested in him.

The wall was built wholly on the land of Densmore, but the effect of the conveyance from Densmore to Bartlet was to make the wall a party wall by agreement. The act of 1849 applies to a party wall—whether made such by statute prescription or agreement.

The counsel for plaintiff in this case contend, that the statute of 1849 was passed for the benefit of cities of the first class. Under the statute governing party walls in Pittsburg the statute of 1849 is not mentioned. It is cited under the laws governing party walls in Philadelphia. We think if this statute is applicable in Allegheny county it is applicable to the case in hand.

In 1 Pennypacker 463, Ener v. Henderson, the court said, "We are of the opinion that since the act 1849, if not always before, outside of Philadelphia, the first builder's interest in a party wall is in law what it always was in fact, an interest in the realty, and not a mere personal right."

Though the statute in regard to party in the city of Philadelphia are not in force in the city of New Castle, yet the principles thereby adopted entitled to weight in determining the question. The decisions

seem to be in favor of applying the statute of 1849 to the commonwealth. We think the plaintiff in this case is not entitled to recover.

Judgment for defendant.

DETRICK, J.

OPINION OF THE SUPREME COURT.

Densmore has conveyed the lot on which the building stands, the use of whose party wall is in question, to Gray, and the adjacent lot to Bartlett. Bartlett's deed contains a covenant for himself, Bartlett, his heirs and assigns, to pay $100 to Densmore for the use of the party wall. It is to be noticed that Densmore, at the time of the conveyance to Bartlett, had ceased to be the owner of the wall. It had passed to Gray. We do not doubt that this covenant between Densmore and Bartlett imposed on the latter the contingent duty of paying the $100, if, and when he, Bartlett, should use the wall.

Bartlett did not use the wall. He has conveyed his lot to Kingdon and Kingdon has used the wall. Must Kingdon pay for it? And must he pay Densmore?

The Act of April 10, 1849, Ph. 600, applies by its terms to party walls in all portions of the state. By this Act, the right to compensation for the party wall would have passed to Gray, but for the covenant of Bartlett to pay it to Densmore. Voight v. Wallace, 179 Pa. 520. The express covenant of Bartlett, whatever its effect on Gray's right, has imposed a duty towards Densmore, despite his preceding conveyance. Has this right passed to his alienee?

The answer to this question presupposes the answer to the question whether the obligation of the covenant of Gray ran with the land. Densmore, as we have said, was not the owner of the lot on which the building had been erected at the time of taking the covenant from Bartlett. He may have had a contract with Gray, that he should receive the compensation for a future use of the wall. He had, if this was so, a mere right to a sum of money. Although the covenant, on Bartlett's part, is for himself, heirs and assigns, this covenant does not, we think, carry over to Bartlett's grantee, Kingdon, any liability. *Cf.* 8 Am. & Eng. Encyc. 135, 18 Am. & Eng. Encyc. 15. Although for different reasons, we reach the conclusion of the learned court below.

Judgment affirmed.